



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 1911 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Peace)

LD#: 19106735

Date: 2/11/2019

Topic: Drivers approaching stationary vehicles displaying warning lights

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Direct Care:**  
Cannot be determined\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined\*\*

\*\*Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal adds § 46.2-861.1 to the *Code of Virginia* to increase the punishment for drivers who fail to yield the right-of-way or reduce speed when approaching emergency vehicles or public utility vehicles on a highway. Currently, the driver of any vehicle, upon approaching a stationary emergency or public utilities vehicle with flashing, blinking or alternating blue, red or amber lights must change into a lane not adjacent to the stationary vehicle or, if changing lanes is unsafe, the driver must proceed with caution at a safe speed for the conditions. Violation is a traffic infraction for the first offense. Any second or subsequent offense involving a vehicle with flashing, blinking or alternating blue or red lights is a Class 1 misdemeanor.

Under the proposal, violation of the proposed § 46.2-861.1 would be defined as reckless driving. If the violation resulted in damage to the property of another person, the court may order the suspension of the driver's privilege to operate a motor vehicle for not more than one year; if the violation resulted in injury or death to another person, the court may order the suspension of the offender's privilege to drive for not more than two years. Per § 46.2-868, reckless driving is punishable as a Class 1 misdemeanor or, if the person's license had been suspended or revoked due to a moving violation and the reckless driving was the sole and proximate cause of death of another, a Class 6 felony. The punishment for anyone convicted of reckless driving who, when he committed the offense, was texting while driving must include a mandatory minimum fine of \$250.

#### Analysis:

According to fiscal year (FY) 2017 and FY2018 data from the General District Court Case Management System (CMS), 7,096 offenders were found guilty of a traffic infraction for violation of § 46.2-921.1 related to an emergency or public utility vehicle (these offenders did not have any criminal charges

resulting in conviction). Under the proposal, these individuals would be guilty of a Class 1 misdemeanor. In addition, during this two-year period, eight offenders were convicted of a Class 1 misdemeanor for a second or subsequent violation of this provision. None of these offenders received an active term of incarceration to serve after sentencing.

Existing data sources do not contain sufficient detail to identify the number of additional individuals who, if the proposal were enacted, would be convicted of a felony for recklessly driving on a suspended license and causing the death of another (§ 46.2-868(B)). However, affected offenders may be sentenced similarly to those currently convicted of this Class 6 felony.

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2017 and FY2018, four offenders were convicted of felony reckless driving with a suspended license resulting in the death of another under § 46.2-868(B). This offense was the primary, or most serious, offense in two of the cases. One of these offenders did not receive an active term of incarceration to serve while the other received a state-responsible (prison) term of 2.5 years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it defines a new reckless driving offense, which is punishable as a Class 6 felony if certain conditions are met, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; however, the impact, if any, is likely to be small.

**Local adult correctional facilities.** Similarly, the proposal may increase local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined.

**Adult community corrections programs.** Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

**Virginia's sentencing guidelines.** Convictions for reckless driving under § 46.2-868 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for this crime may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**