



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1941 **Amendment in the Nature of a Substitute** ***(Patron Prior to Substitute – Bell, Robert B.)***

LD#: 19106787

Date: 2/12/2019

Topic: Maiming resulting from driving while intoxicated

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 amends §§ 18.2-51.4 and 18.2-51.5 to increase the penalty for a person who, as a result of driving or boating while intoxicated in a manner so gross, wanton, and culpable as to show reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment. Under the proposal, the penalty for this offense would increase from a Class 6 to a Class 4 felony. The proposal defines “serious bodily injury” as bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. The proposal also creates new Class 6 felonies for driving or boating while intoxicated and causing the serious bodily injury of another person but not permanent and significant physical impairment.

Currently, the Class 6 felony defined by both statutes only applies when the resulting injury is permanent and significant. Serious bodily injury is not included under the current statutes.

Analysis:

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2017 and FY2018, 87 offenders were convicted of felony maiming while driving intoxicated under § 18.2-51.4. In 47 cases, maiming while driving intoxicated was the primary (or most serious) offense. More than half (59.5%) of the offenders received a state-responsible (prison) term with a median sentence of 2.7 years. Another 36.2% of the offenders received local-responsible (jail) terms for which the median sentence was 6.0

months. The remaining 4.3% did not receive an active term of incarceration to serve after sentencing. During this two-year period, there were no convictions under § 18.2-51.5 for operating a watercraft while intoxicated and causing permanent and significant physical impairment to another.

Impact of Proposed Legislation:

State adult correctional facilities. Because it both increases the penalty for an existing felony offense and expands the current statutes to include other types of physical injuries, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of new felony convictions that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs. Since the length of sentences under the proposed penalty structure and the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

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. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. The sentencing guidelines cover violations of § 18.2-51.4 that are processed in Virginia's circuit courts. Convictions under § 18.2-51.5 and convictions for the proposed Class 6 felonies would not be covered by the sentencing guidelines as the primary (most serious) offense. However, convictions for these offenses could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. 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.

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.