



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1672 **(Patron – Ware)**

LD#: 20104327

Date: 1/16/2020

Topic: Use of handheld personal communications devices while driving

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 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 46.2-1078.1 to limit the use of a handheld personal communications device or any other electronic device capable of providing a visual display while driving. Current law specifically prohibits the reading of an email or text message on the device as well as any act of manually entering letters or text in the device as a means of communicating. Certain exceptions are specified. The proposal would prohibit any driver from using a handheld personal communications device to (i) manually enter any text or symbol, or any email or text message; (ii) read any email or text message or view any symbol or picture; or (iii) communicate by any other nonvoice method. Currently, a violation of § 46.2-1078.1 is a traffic infraction; however, the proposal would increase the penalty to a Class 1 misdemeanor if the violation results in physical injury, to a Class 6 felony if serious physical injury results or, if death results, to a felony punishable by imprisonment for not less than two years nor more than 20 years.

The proposal creates new felonies similar to those defined in § 46.2-865.1 for racing resulting in serious bodily injury (a Class 6 felony) or death to another (a felony punishable by imprisonment from one to 20 years, with a mandatory minimum sentence of one year). Aggravated vehicular involuntary manslaughter while under the influence under § 18.2-36.1(B) is also a felony punishable by imprisonment from one to 20 years, with a mandatory minimum sentence of one year; otherwise, involuntary vehicle manslaughter is a Class 5 felony punishable by up to 10 years in prison. However, under § 46.2-868(B), reckless driving by a person whose license had been suspended or revoked due to a moving violation is a Class 6 felony (punishable by up to five years in prison) if such act was the sole and proximate cause of death of another.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who, if the proposal were enacted, would be convicted of misdemeanor or felony offenses under the proposed § 46.2-1078.1. However, affected offenders may be sentenced similarly to those currently convicted under existing provisions.

According to the General District Criminal and Traffic Court Case Management Systems (CMS) for fiscal year (FY) 2018 and FY2019, 12,587 offenders were convicted of misdemeanor reckless driving under § 46.2-852 or § 46.2-865. Most of these offenders (86.7%) did not receive an active term of incarceration to serve. The remaining 13.3% of offenders were sentenced to serve local-responsible (jail) terms with a median sentence of approximately 0.3 months (approximately 10 days).

According to the Circuit Court Case Management System (CMS) for FY2018 and FY2019, five offenders were convicted of felony reckless driving with a suspended license resulting in the death of another under § 46.2-868(B). This was the primary, or most serious, offense in two of the cases. Neither offender received an active term of incarceration to serve. During the same period, two offenders were convicted of racing resulting in serious bodily injury to another under § 46.2-865.1. Of these, one offender was sentenced to serve six months in jail, and the other was sentenced to imprisonment for one year. There were no convictions for racing resulting in the death of another person.

According to Sentencing Guidelines data for FY2018 and FY2019, 22 offenders were convicted of aggravated vehicular involuntary manslaughter while under the influence under § 18.2-36.1(B). This was the primary offense in 21 of the cases. All of these offenders were sentenced to prison with a median sentence of 10 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal creates new felony offenses under the proposed § 46.2-1078.1. Existing data sources do not provide sufficient detail to estimate the number of additional felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

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. Aggravated vehicular involuntary manslaughter under § 18.2-36.1(B) is currently covered by the sentencing guidelines as the primary (most serious) offense in a case. Convictions for the new misdemeanor and felony offenses under the proposed § 46.2-1078.1 would not be covered; however, such convictions 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.

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 854 of the 2019 Acts of Assembly 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.

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