



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### Senate Bill No. 439

#### Amendment in the Nature of a Substitute

(Patrons Prior to Substitute – Surovell, Stuart, and McDougle)

LD#: 20108106

Date: 02/26/2020

Topic: Ignition interlock and remote alcohol monitoring systems

#### 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:**  
None (\$0) \*\*
- **Juvenile Detention Facilities:**  
None (\$0) \*\*

\*\* 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.

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#### Summary of Proposed Legislation:

The proposal amends §§ 18.2-270.1, 18.2-270.2, 18.2-271.1, and 18.2-272 relating to convictions for driving under the influence and remote alcohol monitoring. Under the proposed § 18.2-270.1(C), adults convicted for a first offense driving while intoxicated whose blood alcohol content was less than .15 would be prohibited from operating a motor vehicle that is not equipped with an ignition interlock system for twelve consecutive months. This would be the sole condition of the restricted license for these offenders.

Under the proposed § 18.2-270.1(E), any offender who is ineligible to receive a restricted license under the interlock provisions may request the court order the use of a remote alcohol monitoring device. As proposed, an offender convicted for DUI who has not been previously been prohibited from operating a vehicle that is not equipped with a functioning ignition interlock system, may be ordered by the court to (i) use a remote alcohol-monitoring device that is capable of scheduled, random, and on-demand testing of the person's blood alcohol level and (ii) refrain from alcohol consumption. The proposal provides that if an offender is ordered to use such a device, the only conditions that will be imposed upon the offender's restricted driver's license, if one is issued, shall be the using of such a device and the existing requirement to have an ignition interlock system. The proposal also provides that it would be a Class 1 misdemeanor to tamper with or in any way attempt to circumvent the operation of a remote alcohol-monitoring device under the proposed § 18.2-270.1(H).

Currently, the court must prohibit all individuals convicted of driving while intoxicated from operating a vehicle that is not equipped with an ignition interlock system for at least six consecutive months but not to exceed the period of license suspension or restriction. Section 18.2-271 provides that the driver's license of an individual convicted of a first offense for driving while intoxicated must be suspended or restricted for one year from the date of conviction.

Section 18.2-272 of the *Code* establishes base penalties for operating a motor vehicle while a driver's license is revoked or restricted following a conviction for driving while intoxicated (DWI). It is a Class 1 misdemeanor to drive or operate a motor vehicle, engine or train in violation of a revoked or restricted license under § 18.2-272(A). Under § 18.2-272(B), it is a Class 1 misdemeanor for an individual whose driver's license was revoked or restricted as the result of a DWI conviction to operate a motor vehicle with a blood alcohol content of .02 percent or more. Driving without an ignition interlock system that is required by § 46.2-391.01 is also punishable as a Class 1 misdemeanor under § 18.2-272(C). A third or subsequent violation of § 18.2-272 within 10 years is a Class 6 felony.

Under the proposed modification of § 18.2-272 (A), existing Class 1 misdemeanor under this subsection would be also applicable to any offender who violated the terms of a restricted license issued pursuant to the proposed subsection C or E of § 18.2-270.1. Accordingly, such offenders would be guilty of Class 6 felony if convicted for a third or subsequent violation of this section. However, the proposal also provides that any person who is guilty of a violation of the proposed § 18.2-270.1(H) for tampering with or attempting to circumvent the operation of a remote alcohol monitoring device is not guilty of a violation of § 18.2-272.

The proposal also specifies that the provisions of this act shall become effective on July 1, 2021.

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**Analysis:**

Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposed amendments. However, affected offenders may be sentenced similarly to those currently convicted under § 18.2-272 for operating a motor vehicle while a driver's license is revoked or restricted following a DWI conviction.

According to fiscal year (FY) 2018 and FY2019 General District (Traffic) Court Case Management System (CMS) data, 52.8% of offenders convicted of a Class 1 misdemeanor under § 18.2-272(A) for driving on a revoked or restricted license after a DWI conviction (as the primary, or most serious, offense) were given a local-responsible (jail) term. The median sentence in these cases was 20 days. The remaining offenders did not receive an active term of incarceration to serve after sentencing. For offenders whose primary offense was a misdemeanor violation of § 18.2-272(B) for driving on a revoked or restricted license with a blood alcohol content greater than .02 percent, most (74.4%) were given a jail term with a median sentence of one month. Of the 53 offenders who were convicted of an interlock violation under § 18.2-272(C), 56.6% were sentenced to a jail term. The median sentence length for these offenders was also one month.

Sentencing Guidelines data for FY2018 and FY2019 indicate that 100 offenders were convicted of a felony for a third or subsequent violation of § 18.2-272. This was the primary, or most serious, offense in 66 of the cases. Half (50.0%) of the offenders in these cases received a state-responsible (prison) term for which the median sentence was 1.1 years. Another 43.9% of the offenders received a local-responsible (jail) term with a median sentence length of six months. Another The remaining 6.1% did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal mainly contains three aspects that may affect the state-responsible (prison) bed space needs of the Commonwealth. First, the proposal would limit the number of restrictions placed upon a subset of individuals subject to a restricted license and, therefore, may reduce the number of individuals who would violate the provisions of § 18.2-272. Second, by increasing the mandatory length of time that certain individuals would be subject to ignition interlock requirements, the proposal may increase the period of time that some individuals could be found in violation of § 18.2-272 for failing to comply with ignition interlock requirements. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Third, to the extent that the proposal adds other type of restricted license requirements (pursuant to subsection C or E of § 18.2-270.1), the proposal may increase the number of individuals who could be found guilty of a third or subsequent violation of § 18.2-272 for failing to comply with the terms of a restricted license. Thus, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not contain sufficient detail to identify cases that would be affected by the proposal or to estimate the net impact of the proposed legislation; therefore, the impact of the proposal on prison bed space needs cannot be determined.

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

**Adult community corrections resources.** The impact on state community corrections resources and local community-based probation services cannot be estimated.

**Virginia's sentencing guidelines.** Felony convictions under § 18.2-272 are covered by the current sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice (DJJ), the proposal will not increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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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 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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