

**Department of Planning and Budget**  
**2021 Special Session I - Fiscal Impact Statement**

**1. Bill Number:** HB2331 S2

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Mullin

**3. Committee:** Appropriations

**4. Title:** Elimination of mandatory minimum sentences; modification of sentence to mandatory minimum term.

**5. Summary:** The enrolled bill eliminates mandatory minimum sentences of confinement from the Code of Virginia.

The enrolled bill also requires the Secretary of Public Safety and Homeland Security to establish a work group to evaluate the feasibility of resentencing persons previously convicted of a felony offense that was punishable by a mandatory minimum term of confinement. The work group must provide recommendations related to potential procedures for conducting such resentencing hearings and collect data concerning the number of persons who may be eligible for a resentencing hearing, the offenses such persons were convicted of, the sentences that such persons received, and the number of years such persons have served for the offense for which there was a mandatory minimum term of confinement. The work group is required to report its findings and recommendations to the Governor and the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by November 1, 2021.

**6. Budget Amendment Necessary:** See line #8

**7. Fiscal Impact Estimates:** Preliminary. See line 8 below.

**8. Fiscal Implications:** This proposal eliminates mandatory minimum sentences imposed for the crimes enumerated in the bill. According to the Virginia Criminal Sentencing Commission (VCSC), when the sentencing guidelines recommend a sentence that is less than the mandatory minimum penalty required by law, the guidelines preparer must enter the mandatory minimum penalty for any part of the guidelines range (be it the low, midpoint, or high) that falls below the mandatory minimum sentence. If the legislation is enacted guidelines preparers would cease making any such adjustments to the recommended range. Also, a few guideline worksheets contain specific factors pertaining to mandatory minimum penalties (e.g., Section A of the Drug/Schedule I/II guidelines). If the legislation is enacted, those factors would no longer be scored.

VCSC staff analyzed FY 2016-FY 2020 felony sentencing events and found that 11.5 percent of felony sentencing events included at least one offense requiring a mandatory minimum sentence (the mandatory minimum offense could have been a felony or a misdemeanor) and that, of the felony sentencing events with at least one mandatory minimum offense, 33.7 percent had the guidelines recommended range adjusted (i.e., some part of the guidelines range was lower than the required mandatory minimum and was therefore replaced with the mandatory minimum).

The number of prison and jail beds this legislation would impact cannot be determined at this time because of insufficient data from the Department of Corrections. According to the Office of Attorney General, this bill is not expected to have a fiscal impact on its operations.

The fiscal impact associated with the resentencing study required by this bill is not known at this time.

This bill eliminates mandatory minimum sentences imposed under § 18.2-270 for driving while intoxicated, including mandatory sentences imposed for second and subsequent offenses. According to information provided by the Department of Motor Vehicles (DMV), eliminating mandatory minimum sentences imposed for convictions of subsequent offenses of driving while intoxicated may impact Virginia's receipt of federal funding from certain Federal Aid Highway Program apportionments.

Specifically, pursuant to Title 23 of the United State Code, states that are not enforcing mandatory minimum sentences for repeat intoxicated driver laws risk having an amount equal to 2.5 percent of a portion of their annual apportionment of Federal Aid Highway Program funds restricted for the use of highway safety projects. DMV reports that this amount totals \$23.5 million in FY 2021.

A "repeat intoxicated driver law" means "a State law or combination of laws or programs that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after previous convictions for that offense shall" receive certain minimum penalties (23 U.S.C. § 164). For conviction of a second offense, the individual must receive not less than 30 days of community service or five days of imprisonment. For conviction of a third or subsequent offense, the individual must receive not less than 60 days of community service or 10 days of imprisonment. Virginia's current mandatory minimum sentences imposed for subsequent offenses meet the requirements of the federal law. If these mandatory minimum sentences are eliminated, Virginia risks a determination that it is not enforcing repeat intoxicated driver laws as required.

In the event that such a determination is made, 2.5 percent (\$23.5 million) of Virginia's annual apportionment of National Highway Performance Program and Surface Transportation Block Grant Program funds would be withheld until certification is received from the state confirming that the funds will be used for authorized highway safety uses. According to DMV, this is identical to the situation Virginia faces for failing to enforce open container law requirements. In FY 2021, \$23.5 million of Virginia's federal highway

funding was diverted for authorized highway safety uses under 23 U.S.C. § 154 because Virginia does not comply with federal open container law requirements.

- 9. Specific Agency or Political Subdivisions Affected:** Secretary of Public Safety and Homeland Security, the Department of Corrections, the Executive Secretary of the Supreme Court, the Virginia Sentencing Commission the Virginia Indigent Defense Commission, the Virginia Association of Commonwealth's Attorneys, local and regional jails, courts, the Department of Motor Vehicles, the Department of Transportation

- 10. Technical Amendment Necessary:** No

- 11. Other Comments:** None