



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 665 (Patron – Petersen)

LD#: 22104189

Date: 01/17/2021

Topic: Death caused by reckless 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 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends § 46.2-868, relating to reckless driving that results in the death of another person. Currently, under § 18.2-868, a person convicted of reckless driving who was driving on a revoked or suspended license and caused the death of another is guilty of a Class 6 felony. Under the proposal, there is no requirement that the individual was driving on a revoked or suspended license at the time of the offense for the felony to apply. The proposal also increases the punishment from a Class 6 felony by specifying that such person will be guilty of involuntary manslaughter (a Class 5 felony).

Voluntary and involuntary manslaughter are defined as Class 5 felonies under § 18.2-35, and § 18.2-36, respectively. According to § 18.2-36.1(A), any person who, as a result of driving under the influence in violation of clause (ii), (iii), or (iv) of § 18.2-266 or any local ordinance substantially similar thereto, unintentionally causes the death of another person is guilty of involuntary manslaughter. Similarly, under § 18.2-36.2(A), any person who, as a result of operating a watercraft or motorboat in violation of clause (ii), (iii), or (iv) of subsection B of § 29.1-738 or a similar local ordinance, unintentionally causes the death of another person, is guilty of involuntary manslaughter.

Analysis:

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2016 through FY2021, five offenders were convicted under § 18.2-868 for reckless driving on a revoked/suspended license that

caused the death of another person. This was the primary, or most serious, offense in two cases. One offender did not receive an active term of incarceration to serve after sentencing. The other offender received a state-responsible (prison) sentence of one year.

Existing data sources do not contain sufficient detail to identify the number of individuals who could be convicted of manslaughter if the proposal were enacted. However, affected offenders may be sentenced similarly to those currently convicted of manslaughter under § 18.2-35, § 18.2-36, § 18.2-36.1(A), or § 18.2-36.2(A). See table below.

Offenders Convicted of Select Felony Offenses, FY2020-FY2021

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Voluntary manslaughter (§ 18.2-35)	43	2.3%	0.0%	NA	97.7%	5.0 yrs.
Involuntary manslaughter (§ 18.2-36)	47	10.6%	23.4%	6.0 mos.	66.0%	4.0 yrs.
Involuntary manslaughter, under the influence (§ 18.2-36.1(A))	31	3.2%	6.5%	6.1 mos.	90.3%	3.0 yrs.
Involuntary manslaughter - watercraft, under the influence (§ 18.2-36.2(A))	0	NA	NA	NA	NA	NA

Note: The analysis is based on cases in which the offense was the primary, or most serious, offense at sentencing.

Sources: Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2020-FY2021;
Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2020-FY2021

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the application and increasing the penalty of an existing felony, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data do not contain sufficient detail to estimate the number of individuals likely to be affected by the proposal. Therefore, the magnitude of the impact 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. The Sentencing Guidelines do not cover convictions under § 46.2-868 as the primary (most serious) offense in a sentencing event. However, such a conviction may 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 (DJJ), 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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, 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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