



## **HB 1993 and HB 2322: Reckless Driving**

July 25, 2011

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# Overview



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# Study Authorization



- House Bill 1993, introduced by Delegate Bill Janis during the 2011 Session of the Virginia General Assembly, would:
  - increase the failure to yield or stop, in Va. Code § 46.2-821 or § 46.2-833, at a controlled intersection, from a fined offense, to reckless driving, a Class 1 misdemeanor.

# Study Authorization



- House Bill 2322, introduced by Delegate Bill Carrico during the 2011 Session of the Virginia General Assembly, would:
  - raise reckless driving speeding, in Va. Code § 46.2-862(ii), from in excess of 80 mph to in excess of 90 mph.

# Reckless Driving Offenses



- In the Virginia Code there are 15 statutes which penalize reckless driving: 13 specific violations, and 2 general violations.
- The 13 specific offenses are:
  - § 46.2-829 overtaking or passing an emergency vehicle that is operating its lights or siren;
  - § 46.2-853 operating a vehicle “not properly under control or with “inadequate or improper adjusted” brakes;

# Reckless Driving Offenses



- § 46.2-854 passing or overtaking a vehicle on a curve or approaching a grade or crest;
- § 46.2-855 driving a vehicle that is loaded in such a way as to obstruct the driver's view or prevent proper control of the vehicle;
- § 46.2-856 passing two vehicles abreast, going the same direction;
- § 46.2-857 driving two abreast in a single lane, in the same direction;
- § 46.2-858 overtaking or passing at a railroad crossing;

# Reckless Driving Offenses



- § 46.2-859 failure to stop for a school bus;
- § 46.2-860 failure to give an adequate or timely signal when turning, slowing down, or stopping;
- § 46.2-861 driving too fast for conditions;
- § 46.2-862 exceeding the speed limit by 20 mph or more, or in excess of 80 mph;
- § 46.2-863 failure to stop at an entrance to a highway from a side road; and,
- § 46.2-865 racing two or more cars, on highways, roads, parking lots open to the public.

# Reckless Driving Offenses



- In addition to the specific reckless driving offenses, there are 2 “general” offenses:
  - § 46.2-852 describes the offense as “any person who drives a vehicle on any highway recklessly or at a speed or in a manner so as to endanger life, limb, or property of any person shall be guilty of reckless driving.”
  - § 46.2-864 applies to parking lots, driveways, and premises of churches, schools, public buildings, industrial establishments, and highways not yet open to the public.



- Virginia courts have addressed this statute and interpreted it in the following manner:
  - “Reckless” in terms of the statute, has been defined by the Supreme Court of Virginia as “a disregard by the driver of a motor vehicle for the consequences of his act and an indifference to the safety of life, limb, or property.” Powers v. Commonwealth, 211 Va. 386, 177 S.E.2d 628 (1970).

# Va. Code § 46.2-852



- Additionally, in Powers, the Court stated that speed alone is not a violation of the statute, but when speed endangers life, limb, or property it violates the statute.
- The Court also noted that “the mere happening of an accident does not give rise to an inference of reckless driving.” Basically, where the evidence leaves “speculation and conjecture,” the Court will refuse to find one guilty under the statute.

# Va. Code § 46.2-852



- The Virginia Court of Appeals has held that intoxication, by itself, is not enough to sustain a conviction under the statute. Hall v. Commonwealth, 25 Va. App. 352, 488 S.E.2nd 651 (1997). There must be evidence that the driver operated the car recklessly.
- However, evidence that a driver was sleepy and there was a known defect with a car, is sufficient to infer reckless driving under the statute. Kennedy v. Commonwealth, 1 Va. App. 469, 399 S.E.2nd 905 (1997).

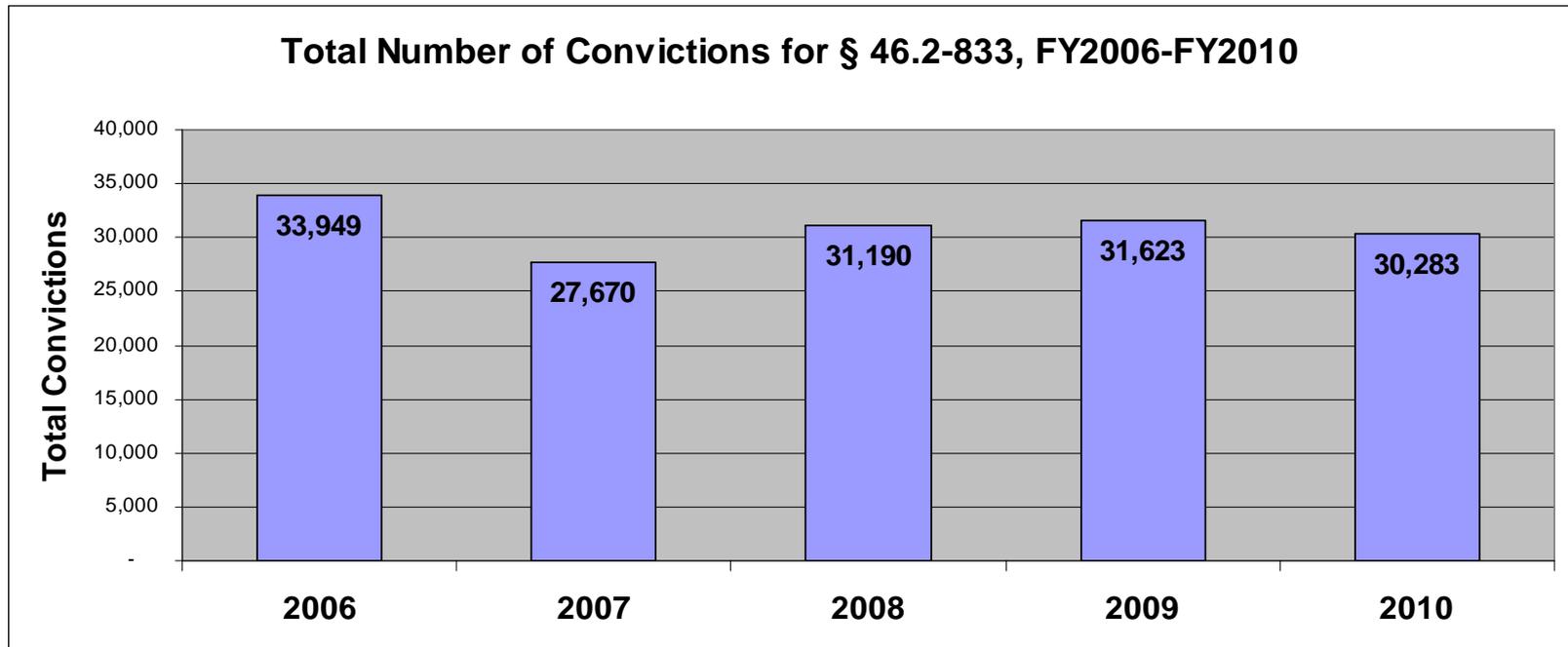


- And finally, the Virginia Court of Appeals held that a driver, with local knowledge of a short merge lane, who sped up, making it difficult for another driver to merge in front of him, was guilty of reckless driving, even when the other driver had the duty to yield. Robinson v. Commonwealth, 48 Va. App. 623, 633 S.E.2nd 737 (2006).

# § 46.2-833 Conviction Data



- There is an average of *at least* 30,943 convictions per year for failure to obey traffic lights (Va. Code § 46.2-833).



Source: Virginia Department of Motor Vehicles

# Speeding Infraction Data



- There is an average of 538,900 charges and 479,900 convictions per year for speeding infractions in general district courts.

Speeding Infraction Charges and Convictions	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011
Total Charges in General District Court	435,047	514,457	599,857	550,430	594,139	540,021
Total Convictions in General District Court	392,056	469,348	540,184	485,790	521,509	470,505

Source: Virginia Criminal Sentencing Commission, General District Court data

# § 46.2-862 Data



- There is an average of 117, 300 charges and 69, 500 convictions per year for exceeding the speed limit/reckless driving (Va. Code § 46.2-862 (i and ii)) in general district courts.

§ 46.2-862, Charges and Convictions	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011
Total Charges in General District Court	112,965	130,726	129,776	108,606	111,864	109,943
Total Convictions in General District Court	72,552	85,513	73,755	62,491	62,557	60,471

Source: Virginia Criminal Sentencing Commission, General District Court data

# Surrounding State Review



- Kentucky:
  - Has a general reckless driving statute, similar to Va. Code § 46.2-852.
  - Failure to yield or stop is a traffic violation, just as it is in Virginia.
  - There is no automatic reckless driving offense for a specified speed or speeding over a posted limit.

# Surrounding State Review



- Maryland:
  - Has a general reckless driving statute similar to Virginia's, but no specific reckless offenses. A violation is subject to a \$1,000 fine.
  - Failure to stop or yield is penalized as a traffic offense with a fine.
  - Speeding is penalized with a fine or as a point violation.

# Surrounding State Review



- North Carolina:
  - Reckless driving is a Class 2 misdemeanor, and punishes driving that is performed “carelessly and heedlessly in willful or wanton disregard of the rights or safety of others.”
  - Failure to yield or to stop is penalized as a fine, and if doing so causes an injury or death, it is a mandatory \$500 fine.
  - Exceeding the speed limit by 15 mph, or in excess of 80 mph, is an automatic suspension of license.

# Surrounding State Review



- Tennessee:
  - Reckless driving is very similar to Va. Code § 46.2-852; but riding a motorcycle on one wheel or driving through a flood warning sign is consider to be reckless driving as well.
  - Failure to yield or stop is a punished with a fine, but if injury or death occurs, there is a mandatory fine of \$250 or \$500, respectively.
  - Speeding is punished by a fine or point violation, unless it is considered to be reckless driving.

# Surrounding State Review



- West Virginia:
  - Reckless driving is very similar to Va. Code § 46.2-852, however, the penalties can include minimum jail time and a fine up to \$500.
  - Failure to yield or stop is a fined offense, up to \$1,000.
  - Speeding is generally a fined offense, however, if there are 3 or more convictions within a given time frame, the fines go up or there is the possibility of up to 6 months jail time.

# Policy Considerations



- Should a violation of Va. Code § 46.2-833 be considered reckless driving, Class 1 misdemeanor?
- Should a violation Va. Code § 46.2-862(ii) (reckless driving speeding) be increased from in excess of 80 mph to in excess of 90 mph?



## **Discussion**

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