

Virginia State Crime Commission

Reckless Driving

2011

Reckless Driving

Executive Summary

During the 2011 Regular Session of the Virginia General Assembly, Delegate Bill Janis introduced House Bill 1993 (HB 1993) and Delegate Bill Carrico introduced House Bill 2322 (HB 2322), both of which dealt with traffic crimes. House Bill 1993 sought to make failure to obey a traffic light a Class 1 misdemeanor and HB 2322 sought to raise the speed limit, from 80 mph to 90 mph, as the point at which speeding changes from being a traffic infraction to the crime of reckless driving.

In Virginia, reckless driving is considered a criminal violation, as opposed to a traffic infraction. There are two “general” reckless driving statutes that punish driving done in a reckless manner or without consideration of “life, limb, and property.” There are also 13 *per se*, or strict, reckless driving offenses in Virginia. The states surrounding Virginia, namely Kentucky, Maryland, North Carolina, Tennessee, and West Virginia, all treat reckless driving as a traffic infraction. A review of the surrounding states’ reckless driving statutes revealed that Virginia’s statutory reckless driving scheme is the most punitive.

As a result of this study effort, no formal recommendations were made by the Crime Commission.

Background

House Bill 1993 was introduced by Delegate Bill Janis during the 2011 Regular Session of the Virginia General Assembly.¹ As introduced, the bill would have increased the penalties for the failure to yield or stop, in violation of Va. Code § 46.2-821, or failure to obey a traffic signal at a controlled intersection, in violation of Va. Code § 46.2-833, from a fined offense, to reckless driving, if the violation of either of these statutes caused an accident causing serious bodily injury or death. A substitute was passed by the Virginia House of Delegates, which made a violation of Va. Code § 46.2-833 reckless driving, penalized as a Class 1 misdemeanor. Additionally, HB 2322, introduced by Delegate Bill Carrico during the 2011 Regular Session of the Virginia General Assembly, would have raised reckless driving speeding, in Va. Code § 46.2-862(ii), from in excess of 80 mph to in excess of 90 mph.²

Reckless driving is considered a criminal offense rather than a traffic offense. The statutory scheme in the Commonwealth that addresses the punishment of reckless driving has 13 very specific offenses and two “general” offenses. The 13 specific offenses are what could be called *per se* offenses, meaning that if there is evidence a driver committed one of the prohibited acts, he may be found guilty of reckless driving and punished consistent with a Class 1 misdemeanor. The 13 specific offenses include:

- Overtaking or passing an emergency vehicle that is operating its lights or siren;³
- Operating a vehicle “not properly under control” or with “inadequate or improper adjusted” brakes;⁴
- Passing or overtaking a vehicle on a curve or approaching a grade or crest;⁵
- Driving a vehicle that is loaded in such a way as to obstruct the driver’s view or prevent proper control of the vehicle;⁶
- Passing two vehicles abreast, going the same direction;⁷
- Driving two abreast in a single lane, in the same direction;⁸
- Overtaking or passing at a railroad crossing;⁹
- Failure to stop for a school bus;¹⁰
- Failure to give an adequate or timely signal when turning, slowing down, or stopping;¹¹
- Driving too fast for conditions;¹²
- Exceeding the speed limit by 20 mph or more, or in excess of 80 mph;¹³
- Failing to stop at an entrance to a highway from a side road; and,¹⁴
- Racing two or more cars, on highways, roads, or parking lots open to the public.¹⁵

In addition to the specific reckless driving offenses, there are two “general” offenses that penalize reckless driving conduct as a Class 1 misdemeanor. Virginia Code § 46.2-852, known as “Reckless Driving: General Rule,” defines the offenses as, “irrespective of the maximum speeds permitted by law, any person who drives a vehicle on any highway recklessly or at a speed or in a manner so as to endanger the life, limb, or property of any person shall be guilty of reckless driving.”

This statute has been addressed by the courts in considering the limits and parameters of violating the statute. However, the court cases tend to define what is not punished under the statute, rather than conduct covered by the statute. The Supreme Court of Virginia has defined the term “reckless” in terms of this statute to mean “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.”¹⁶ The Court also held that speed, by itself, is not sufficient to find guilt under the statute; there must be speed and conduct that endangers life, limb, or property.¹⁷ The Power’s Court also held that “the mere happening of an accident does not give rise to an inference of reckless driving.”¹⁸ Basically, where the evidence leaves “speculation and conjecture,” the Court will refuse to find a driver guilty under the statute.¹⁹ In a similar vein, the Virginia Court of Appeals has held that intoxication, by itself, is not enough to sustain a conviction under the statute.²⁰ The Court of Appeals held that, in addition to evidence of intoxication, there must also be evidence that the driver operated the car recklessly in order to sustain a conviction under Va. Code § 46.2-852.²¹

While most cases point out what conduct will not suffice for a conviction under the statute, there are some decisions that provide a better understanding of prohibited “reckless” conduct. The Virginia Court of Appeals held that evidence which suggested that a driver who crashed his motor vehicle, knew he was sleepy and that there was a known defect with his car, was sufficient to infer reckless driving under the statute.²² Additionally, the Virginia Court of Appeals held that a driver, with local knowledge of a

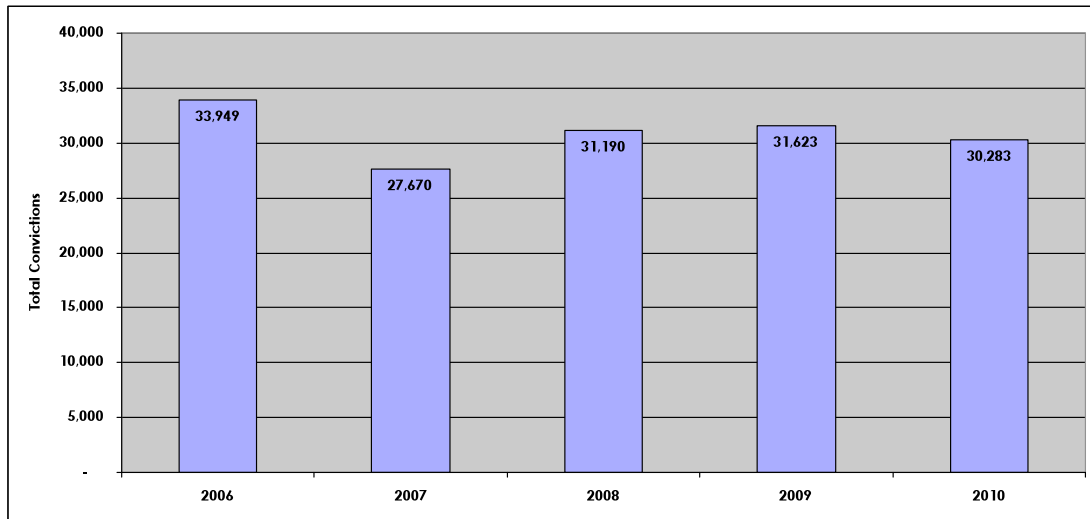
short merge lane, who sped up, making it difficult for another driver to merge in front of him, was guilty of reckless driving, even when the other driver had the duty to yield.²³

Conviction Data

Staff requested data from various agencies to obtain a better understanding of reckless driving convictions across the Commonwealth. Specifically, conviction data was requested for failure to obey a traffic signal in violation of Va. Code § 46.2-833, because HB 1993 would move that offense from a traffic violation to a Class 1 misdemeanor. Additionally, conviction data was sought for reckless driving speeding violations of Va. Code § 46.2-862.

As illustrated in Figure 1 below, there is an average of approximately 30,943 convictions per year for failure to obey traffic lights in violation of Va. Code § 46.2-833.

Figure 1: Total Number of Convictions for § 46.2-833, CY06-CY10



Source: Virginia Department of Motor Vehicles.

As seen in Figure 2 below, there was an average of 538,900 charges and 479,900 convictions per year for speeding infractions in general district courts, over the past 6 fiscal years.

Figure 2: Total Speeding Infraction Charges and Convictions, FY06-FY11

Speeding Infraction Charges and Convictions	FY06	FY07	FY08	FY09	FY10	FY11
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, FY06-FY11.

Finally, as illustrated in Figure 3 below, there was 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, over the past 6 fiscal years.

Figure 3: Total Speed Limit/Reckless Driving Charges and Convictions, FY06-FY11

§ 46.2-862, Charges and Convictions	FY06	FY07	FY08	FY09	FY10	FY11
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, FY06-FY11

Surrounding State Review

Staff reviewed how states surrounding Virginia punish reckless driving, including:

Kentucky: Has a general reckless driving statute, similar to Va. Code § 46.2-852.²⁴ Failure to yield or stop is a traffic violation, just as it is in Virginia.²⁵ There is no automatic reckless driving offense for a specified speed or speeding over a posted limit.²⁶

Maryland: Has a general reckless driving statute similar to Virginia’s, but no specific reckless offenses.²⁷ A violation is subject to a \$1,000 fine. Failure to stop or yield is penalized as a traffic offense with a fine and speeding is penalized with a fine or as a point violation.²⁸

North Carolina: The general reckless driving statute prohibits driving performed “carelessly and heedlessly in willful or wanton disregard of the rights or safety of others.”²⁹ Failure to yield or to stop is penalized with a fine, and if doing so causes an

injury or death, it is a mandatory \$500 fine.³⁰ Exceeding the speed limit by 15 mph, or in excess of 80 mph, is an automatic suspension of license.³¹

Tennessee: The reckless driving statute is very similar to Va. Code § 46.2-852; however riding a motorcycle on one wheel or driving through a flood warning sign is considered to be reckless driving as well.³² Failure to yield or stop is punished with a fine, but if injury or death occurs, there is a mandatory fine of \$250 or \$500, respectively.³³ Speeding is punished by a fine or point violation, unless it is considered to be reckless driving.³⁴

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 \$500.³⁵ Failure to yield or stop is a fined offense, up to \$1,000.³⁶ Speeding is generally a fined offense; however, if there are three or more convictions within a given time frame, the fines go up or there is the possibility of up to six months jail time.³⁷

Overall, based on a review of Virginia’s reckless driving statutory scheme, it appears Virginia has a much stricter system than its bordering states. Additionally, in Virginia, a far wider array of conduct is considered to constitute reckless driving.

Conclusion

In Virginia, reckless driving is considered a crime and not treated as a traffic infraction. In addition to a “general” reckless driving statute, there are 13 specific reckless driving crimes. When compared to the states surrounding Virginia, the statutory scheme in Virginia is significantly broader and penalizes reckless conduct as a crime, instead of a traffic violation.

The Crime Commission took no action to increase the penalty for failure to yield from a traffic violation to a Class 1 misdemeanor nor to increase the reckless driving speeding from 80 mph to 90 mph.

¹ H.B. 1993, 2011 Gen. Assemb., Reg. Sess. (Va. 2011).

² H.B. 2322, 2011 Gen. Assemb., Reg. Sess. (Va. 2011).

³ VA. CODE ANN. § 46.2-829 (2011).

⁴ VA. CODE ANN. § 46.2-853 (2011).

⁵ VA. CODE ANN. § 46.2-854 (2011).

⁶ VA. CODE ANN. § 46.2-855 (2011).

⁷ VA. CODE ANN. § 46.2-856 (2011).

⁸ VA. CODE ANN. § 46.2-857 (2011).

⁹ VA. CODE ANN. § 46.2-858 (2011).

¹⁰ VA. CODE ANN. § 46.2-859 (2011).

¹¹ VA. CODE ANN. § 46.2-860 (2011).

¹² VA. CODE ANN. § 46.2-861 (2011).

¹³ VA. CODE ANN. § 46.2-862 (2011).

¹⁴ VA. CODE ANN. § 46.2-863 (2011).

¹⁵ VA. CODE ANN. § 46.2-865 (2011).

¹⁶ Powers v. Commonwealth, 211 Va. 386, 177 S.E.2d 628 (1970).

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Hall v. Commonwealth, 25 Va. App. 352, 488 S.E.2d 651 (1997).

²¹ Id.

²² Kennedy v. Commonwealth, 1 Va. App. 469, 399 S.E.2d 905 (1997).

²³ Robinson v. Commonwealth, 48 Va. App. 623, 633 S.E.2d 737 (2006).

²⁴ KY. REV. STAT. ANN. § 189.290 (West 2011). Requires the “operator of any vehicle upon a highway shall operate the vehicle in a careful manner, with regard for the safety and convenience of pedestrians and other vehicles upon the highway.”

²⁵ KY. REV. STAT. ANN. § 189.993 (West 2011).

²⁶ KY. REV. STAT. ANN. § 532.020(4) (West 2011).

²⁷ MD. CODE ANN., TRANSP. § 21-901.1 (West 2011). The statute defines reckless driving as “wanton or willful disregard for the safety of persons or property; or in a manner that indicates a wanton or willful disregard for the safety of persons or property.”

²⁸ MD. CODE ANN., TRANSP. § 21-801.1 (West 2011).

²⁹ N.C. GEN. STAT. ANN. § 20-140 (West 2011).

³⁰ N.C. GEN. STAT. ANN. § 20-160.1 (West 2011).

³¹ N.C. Gen. Stat. Ann. § 20-16.1 (West 2011).

³² TENN. CODE ANN. § 55-10-205 (West 2011).

³³ TENN. CODE ANN. § 55-8-197 (West 2011).

³⁴ TENN. CODE ANN. § 55-8-152 (West 2011).

³⁵ W. VA. CODE ANN. § 17C-5-3 (West 2011).

³⁶ W. VA. CODE ANN. § 17C-9-6 (West 2011).

³⁷ W. VA. CODE ANN. § 17C-6-1 (West 2011).