



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 368

(Patron – Cosgrove)

Date Submitted: 12/17/01

LD #: 02-6490674

Topic: Disregarding signal by law-enforcement officer to stop; eluding police

Proposed Change:

Amends §46.2-817 making it a Class 6 felony to drive a motor vehicle in willful and wanton disregard of a visible or audible signal from any law-enforcement officer to bring one's vehicle to a stop or to attempt to escape or elude such law-enforcement officer. Should an injury result from the offense, the person would be guilty of a Class 5 felony and, should death result from the offense, the person would be guilty of a Class 4 felony.

Current Practice:

Under §46.2-817(A), it is a Class 3 misdemeanor to drive a motor vehicle in willful and wanton disregard of a visible or audible signal from any law-enforcement officer to stop or to attempt to escape or elude such law-enforcement officer. Committing such an offense so as to interfere with or endanger the operation of the law enforcement vehicle or endanger a person is a Class 6 felony under §46.2-817(B).

Under the proposed amendment, the misdemeanor offense would be eliminated and combined with the felony offense. Furthermore, two new offenses, if injury or death occurs as a result of the offense, would be created.

According to FY2001 Local Inmate Data System (LIDS) data, 304 offenders held pre- or post-trial in jail were convicted under §46.2-817(A). Of those, 87.5% received a local responsible sentence and 1% received a state responsible sentence due to convictions for additional charges. The median sentence was one-half month (see *Background Sentencing Information* below). As a misdemeanor, conviction under §46.2-817(A) is not covered by the sentencing guidelines as the primary, or most serious, offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Pre/Post-Sentence Investigation (PSI) data for calendar years (CY) 1999 and 2000 reveal that there were 52 felony convictions under §46.2-817(B). Of those, the majority (63.5%) received a state-responsible (prison) term with a median sentence of 2.75 years. In cases with no reported physical injury (75%) the median sentence was 1 year, in cases where physical injury was reported (21.2%) the median sentence was 2 years, and in cases where death was reported (3.8%) the median sentence was 3.5 years.

Convictions under §46.2-817(B) are not covered by the guidelines as the primary (or most serious) offense but may augment the sentence recommendation as additional offenses.

Background Sentencing Information

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Jail Sentence
Eluding police §46.2-817 (A)	304	11.5%	87.5%	1%	.5 mo.

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.
Data Source: FY2001 Local Inmate Data System (LIDS)

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Prison Sentence
Eluding police-endangerment §46.2-817 (B)	52	13.5%	23%	63.5%	2.75 yrs.

Data Source: CY1999 and CY2000 Pre/Post-Sentence Investigation (PSI) database

Impact of Proposed Legislation:

The proposed legislation raises the penalty structure for an existing crime and creates newly defined offenses. According to LIDS data, there were 304 convictions as Class 3 misdemeanors that would become Class 6 felonies under the proposed amendment. As the current median sentence for this offense is less than one month, should the judges decide to sentence more harshly after this amendment, there is a potential for a fiscal impact from this portion of the proposal. While there is the potential of an impact on state-responsible (prison) bed space needs due to this portion of the proposed legislation, it cannot be quantified.

Furthermore, two new offenses, in cases that result in injury or death, would be created. Pre/Post-Sentence Investigation (PSI) data revealed that of the 52 convictions under §46.2-817(B), death was reported in 3.8% of the cases and physical injury was reported in 21.2% of the cases. The cases that involve death would be raised from a Class 6 felony (1 to 5 year penalty structure) to a Class 4 felony (2 to 10 year penalty structure). However, the median sentence in these cases is already 3.5 years and therefore is within the limits of either penalty structure. Similarly, cases that involve physical injury would be raised from a Class 6 felony (1 to 5 year penalty structure) to a Class 5 felony (1 to 10 year penalty structure). The median sentence in these cases is 2 years, thus, is within the limits of either penalty structure. The impact of this portion of the proposed legislation on state-responsible (prison) bed space cannot be quantified, but it is expected to be small. No adjustment to the guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) reports four juveniles committed to Juvenile Correctional Centers with violation of §46.2-817(A) as an accompanying charge. Although presently paragraph A is not a committable charge, the proposed amendment would make it so. DJJ did have 83 intakes at court services units in FY 2001 for §46.2-817(A), but cannot predict the disposition of those charges if they become a felony.

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 and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.