



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

### **House Bill No. 2826**

*(Patron – McDougle)*

**Date Submitted:** 1/26/03

**LD #:** 03-9838838

**Topic:** Resisting arrest

#### **Proposed Change:**

The proposal adds § 18.2-479.1 relating to resisting arrest. The proposed penalty structure makes the new crime a compound\* offense with the predicate offense determining the penalty structure. Any person who intentionally prevents or attempts to prevent a law enforcement officer from making a lawful arrest for a misdemeanor, with or without a warrant, of himself or another person, is guilty of a Class 1 misdemeanor. If the arrest is for a felony, however, the offender is guilty of a Class 6 felony. For purposes of this section, resisting arrest includes, but is not limited to, flight from a law enforcement officer when (1) there is an application of physical force by the officer, or (2) the officer communicates to the person that he is under arrest, and (i) the officer has the immediate ability to lawfully place the person under arrest, and (ii) a reasonable person who received such communication would know that he is not free to leave.

Currently, resisting arrest is covered under § 18.2-460 relating to obstruction of justice. Any person who knowingly obstructs a law enforcement officer in the performance of his or her duties, with or without threats or force, is guilty of a Class 1 misdemeanor.

#### **Current Practice:**

According to fiscal year (FY) 2000 and FY2001 Local Inmate Data System (LIDS) data, 1,922 offenders held pre- or post-trial in jail were convicted of a obstruction of justice under §18.2-460 where there had been an accompanying criminal offense charged. It is assumed that when the obstruction of justice occurred on the same date as a criminal charge, the obstruction of justice took the form of resisting arrest. Of the total, 1,021 were charged with a predicate misdemeanor and resisting arrest. Nearly all (96%) were sentenced to terms of incarceration; however, 90% were sentenced to a local-responsible (jail) term, with a median sentence of about 40 days.

The remaining 901 were charged with a predicate felony and resisting arrest. Similarly, nearly all (97%) were sentenced to incarceration; however, 76% were sentenced to jail (median sentence of three months), and 21% were sentenced to a state-responsible (prison) term (median sentence of 2.8 years).

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\* A compound offense is defined by the combination of two or more elements, while a predicate offense is a specified criminal precondition for some compound offenses. Under current law, resisting arrest is treated as a misdemeanor offense under the obstruction of justice statutes regardless of the seriousness of the crime for which the person is being arrested. The proposal would elevate the current misdemeanor to a felony if the offense for which the person is being arrested is a felony.

In these cases, prison sentences may have been the result of one or more accompanying felonies that were committed at a time other than the resisting arrest.

As new crimes, both the misdemeanor and felony provisions of the proposed § 18.2-479.1 would not be covered by the sentencing guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

**Impact of Proposed Legislation:**

The proposed legislation effectively raises the penalty structure for an existing crime. When a felony arrest is resisted, the penalty increases from a Class 1 misdemeanor for an existing crime to a Class 6 felony. Application of sentences for similar crimes indicates that the proposal would increase the need for state-responsible (prison) bed space. For the purposes of this analysis, the persons affected are those who were resisted arrest for one or more felony offenses, but were not convicted of the predicate felony offense; that is, the felony was reduced to a misdemeanor, dismissed, nolle prossed, or the like. In this scenario, over the next six years, the net high state-responsible impact would be approximately 155 beds.

There will also be a reduced need for local-responsible (jail) bed space; based on the methodology, there will be a savings of approximately 30 jail beds statewide, for a savings to the state of \$348,966 (using FY2001 jail inmate costs) for reimbursement to localities. There would be an additional statewide savings for the localities of \$252,360 for the same beds.

The anticipated impact on community corrections programs is expected to be twofold. First, there may be a shift from local to state-funded programs. And second, on average, the need for a program placement will be delayed by about four months (the difference in time actually served for the current misdemeanor versus the time estimated to be served under the proposed felony). A third factor may impact community corrections programs; that is, the supervision for a felony crime may be longer than for the comparable crime when it was defined as a misdemeanor. For felony convictions for felony failure to appear under § 19.2-128 (the comparison offense), 42% had sentences that included supervised probation; of those, the supervision periods ranged from five months to an indefinite term of supervision, with a median of three years supervision.

Additionally, there may be an increased need for prison or jail bed space based on probation or post-release supervision revocations. A judge can impose and suspend more time for a felony than a misdemeanor, and, consequently, if an offender violates release conditions, the potential amount of time that a judge may re-impose for a revocation is longer as well. For felony convictions for felony failure to appear under § 19.2-128, all or part of the sentence was suspended in 62% of the cases; of those, the suspended time ranged from about 10 days to 37 years (nearly 40% had accompanying crimes at sentencing), with a median of three years suspended from the sentence.

No adjustment to the sentencing guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) reports that, for FY2001 and FY2002 there were 908 intakes at the Department's Court Services Units (CSU) for obstructing justice under of § 18.2-460. Of these,

249 had an accompanying felony, while 479 had an accompanying misdemeanor. DJJ indicates that the proposal may have an impact on the Juvenile Correctional Centers (JCC) in two ways. First, by making resisting a felony arrest a felony, the proposed change would make a juvenile eligible for commitment, while under current law, at least four Class 1 misdemeanors would be necessary to commit a juvenile without an accompanying felony. Second, the same provision will affect the Department's Length of Stay (LOS) guidelines by elevating the crime to a Class 6 felony; as such, the minimum commitment assigned under the Department's LOS guidelines would be increased from the current 3-6 months to 6-12 months.

**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY03	FY04	FY05	FY06	FY07	FY08
2	64	121	141	149	155

**Estimated Six-Year Impact in Local-Responsible (Jail) Beds**

FY03	FY04	FY05	FY06	FY07	FY08
-1	-19	-27	-29	-30	-30

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$3,449,017 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2002.
2. New cases representing misdemeanor and local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database.
3. Cost per prison bed was assumed to be \$22,286 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on the Compensation Board's FY2001 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$31.86 per day or \$11,637 per year. The local cost was calculated by using the daily expenditure cost of \$57.45 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$23.04 per day or \$8,415 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2003, is phased in to account for case processing time.
2. The bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates for felony convictions were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2001; for non-violent offenses, this rate was 9.7%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants, sentenced in FY2000, with no accompanying felony conviction; this rate was 39.15%.
3. Sentences for persons affected by the felony provisions under the proposed legislation were randomly drawn from sentences for persons convicted under § 19.2-128 for felony failure to appear with no accompanying felony conviction. For the purposes of this analysis, the persons affected are those who were resisted arrest for one or

more felony offenses, but were not convicted of the predicate felony offense (e.g., the felony was reduced to a misdemeanor, dismissed, nolle prossed).

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