



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 164

(Patron – Albo)

Date Submitted: 12/29/03

LD #: 04-7668204

Topic: Obstruction of justice involving threats of bodily harm to witness

Proposed Change:

The proposal amends § 18.2-460 making it a crime to threaten to do bodily harm to a witness with the intent to intimidate or impede the witness in a court proceeding. Any person committing the crime would be guilty of a Class 5 felony, punishable by one to ten years incarceration. In addition, the proposal establishes that the venue for trial of obstruction of justice crimes listed under §18.2-460 shall be the city or county in which the court proceeding was pending or in the city or county where any act of intimidation was done.

Currently, the *Code of Virginia* states that anyone who, by threats or force, knowingly attempts to resist arrest or intimidate or impede a police officer, judge, witness, etc., is guilty of a Class 1 misdemeanor. Furthermore, the *Code* states that anyone who by threats of bodily harm or force knowingly attempts to intimidate or impede a police officer, judge, witness, etc., relating to a violation of §18.2-248 or §18.2-248.1(a)(3), (b) or (c) (dealing primarily with distribution, etc., of narcotics), or to a violation of any violent felony offense listed in subsection C of §17.1-805, shall be guilty of a Class 5 felony.

Data Analysis:

According to the Pre/Post-Sentence Investigation (PSI) database from FY2000 and FY2001, there were 12 felony convictions under §18.2-460(C) involving intimidation of police, judges, witnesses, etc., with threats of force. The victim was a police officer in eight of the cases and a friend in one case, while no relationship was specified in three of the cases. The judge imposed no active term of incarceration in 58% of cases, a jail term in 17% of cases, and a state-responsible prison sentence in 25% of cases. For the state-responsible prison cases, the median length of incarceration was 2 years.

Between FY2001 and FY2002, the Local Inmate Data System (LIDS) database shows 956 misdemeanor convictions under § 18.2-460(B) involving resisting arrest or intimidation of police, judges, witnesses, etc., with force. No victim information is specified in the LIDS database, so it is impossible to determine how many involved witnesses. Of the misdemeanor convictions for resisting arrest, there were about 6% who did not receive an incarceration sentence. The large majority (94%)

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received a local responsible, or jail, sentence. The median sentence for those in a local facility was 2 months.

Background Sentencing Information

Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence	Median State-Responsible Sentence
Misdemeanor -- Resisting arrest, obstructing justice by threats or force (§18.2-460(B))*	956	5.8%	93.8%	0.4%	2 Months	--
Felony -- Intimidation of police, judges, witnesses, etc., by bodily harm, force (§18.2-460(C))**	12	58%	17%	25%	--	2 Years

*Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

**Data Source: FY2000 and FY2001 Pre-Sentence Investigation (PSI) database

Impact of Proposed Legislation:

The proposed legislation amends §18.2-460 making it a Class 5 felony for a person to intimidate or impede a witness with threats of bodily harm or force. Although information is available in the Commonwealth pertaining to the number of convictions for intimidation of police, judges, witnesses, etc., the data are not specific to witnesses alone. The proposed legislation may have an impact on the bed space needs of the Commonwealth. However, the databases available to the Commission are insufficient to provide information on the number of incidences that may be affected by the proposed legislation.

Convictions for obstruction of justice are not covered by the sentencing guidelines as the primary, or most serious, offense. However, these offenses may augment the guidelines recommendation when they are listed as additional offenses. No adjustment to the sentencing guidelines would be necessary under the proposal.

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.

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