



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 51

(Patron – Cosgrove)

Date Submitted: 11/24/03

LD #: 04-1317276

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

Proposed Change:

This proposal amends paragraph B of § 46.2-817 to increase the penalty for eluding police to a Class 5 felony if an injury or death results from the offense.

Under the existing § 46.2-817, it is 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 stop in such a way as to interfere with the law enforcement vehicle or to endanger another. Currently, there is not an enhanced penalty if injury or death results. The crime was elevated from a Class 1 misdemeanor by the 1999 General Assembly.

Current Practice:

According to fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 76 offenders were convicted of a felony § 46.2-817(B). Of those, five resulted in injury (4) or death (1) to the victim. Each of these five offenders was incarcerated, with 80% sentenced to a state-responsible (prison) term. The median prison sentence was 3.7 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

	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Eluding police involving endangerment that resulted in victim injury or death §46.2-817 (B)	5	0%	20%	80%	3.7 yrs.

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

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

Impact of Proposed Legislation:

The proposed legislation raises the penalty range for an existing crime, if the violation of § 46.2-817(B) results in the injury or death of another. Application of sentences for similar crimes indicates that the proposal would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, the net high state-responsible impact would be approximately one bed.

In addition, there will be an impact on local-responsible (jail) bed space; based on the methodology, there will be a need for approximately .25 jail bed statewide, for a cost to the state of \$2,332 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost borne by the localities of \$1,587 for the same partial bed.

The anticipated impact on community corrections programs is unknown because sufficient data is not available to calculate the impact on such programs. However, it is expected to increase the need for probation services from both state and local programs.

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

The Department of Juvenile Justice (DJJ) reports that for FY2002, there were 23 juveniles committed to Juvenile Correctional Centers (JCC) for violation of § 46.2-817(B). Although unable to distinguish whether any of these commitments involved injury or death, DJJ indicates that Class 5 and 6 felonies are placed on the same level under the Department's Length of Stay (LOS) guidelines; therefore, the proposed legislation will not affect the duration of commitment in the JCCs.

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

FY04	FY05	FY06	FY07	FY08	FY09
0	0	0	0	1	1

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$27,411 for periods of imprisonment in state adult correctional facilities and is \$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 2003.
2. New cases representing state-responsible sentences were based on forecasts approved by the Secretary's Committee on Inmate Forecasting in August 2003. New cases representing local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the Local Inmate Data System (LIDS) database.
3. The estimated number of offenders that would be sentenced under the proposal was adjusted to reflect that the impact of existing law (adopted in 1999) has not been fully felt yet. The Commission adjusted the number of affected offenders based on Commission analyses of case processing time for non-violent felons sentenced to prison and jail during the most recent two years. For example, of the 9,061 non-violent offenders admitted to prison during those two years, only 5,975 were estimated to have been sentenced for a crime committed on or after July 1, 1999. To adjust for the incomplete data, it was assumed that every offender observed during the first

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two years of implementation, would represent 1.52 offenders once the existing law were fully implemented; for jail-bound offenders, the comparable number was 1.44, based on 10,160 total admissions, of which 7,052 were estimated to have been for crimes committed on or after July 1, 1999.

4. Cost per prison bed was assumed to be \$22,606 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.***
5. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 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 \$20.29 per day or \$7,410 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, 2004, is phased in to account for case processing time.
2. The state-responsible 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 those with state responsible (prison) sentences were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002; for nonviolent offenses, this rate was 9.54%. Release dates for those with local responsible (jail) sentences were estimated based on the average rate (10.3%) at which inmates in local jails were earning sentence credits in FY2003.
3. Sentences for persons affected by the felony provisions under the proposed legislation were randomly drawn from sentences for persons convicted of the Class 5 felonies of §§ 18.2-36.1(A) (vehicular involuntary manslaughter) and 18.2-55 (assault by a prisoner, probationer or parolee). As only one of the five convictions for eluding involved death, the probability that a manslaughter sentence would be sampled was adjusted to be one in five. Whenever a sampled sentence from among the assaults and manslaughters did not exceed the existing sentence for eluding, the sentence for eluding was used.

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