



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 66

(Patron – Cosgrove)

Date Submitted: 12/2/03

LD #: 04-1318276

Topic: Impersonating an officer

Proposed Change:

This proposal amends § 18.2-174 to increase the penalty for impersonating a law enforcement officer from a Class 1 misdemeanor to a Class 6 felony if the impersonation occurred during the commission of a felony defined in Chapter 4 of Title 18.2 (homicide, crimes by mobs, crimes by gangs, kidnapping and related offenses, assaults and bodily woundings, robbery, extortion and other threats, criminal sexual assault, and abortion).

Data Analysis:

According to fiscal year (FY) 2000 and FY2001 Local Inmate Data System (LIDS) data, 43 offenders held pre- or post-trial in jail were convicted of a Class 1 misdemeanor offense under § 18.2-174. Of those, eight were charged with both a predicate crime from Chapter 4 of Title 18.2 and the compound offense of impersonation of a law enforcement officer. One offender was convicted of only the impersonation charge and was sentenced to five months in jail. The remaining seven were convicted of at least one predicate crime in addition to the impersonation offense; nearly all (86%) were sentenced to state-responsible (prison) terms, with a median prison sentence of 9 years and 9 months.

Impact of Proposed Legislation:

The proposed legislation raises the penalty for an existing crime under certain circumstances. 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 .20 bed.

In addition, there will be an impact on local-responsible (jail) bed space; based on the same methodology, there will be an increased need for one partial bed statewide, for a cost to the state of \$134 (using FY2001 jail inmate costs) for reimbursement to localities. There would be an additional cost to the localities of \$91 for the same partial bed.

An impact on community corrections programs may result. The proposed legislation targets offenders who impersonate an officer while committing certain felony crimes against a person. Offenders convicted of this combination of offenses under existing law are subject to a variety of obligations under

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the purview of community corrections, as may be ordered by the court. Increasing the penalty for impersonating an officer to a felony in these cases, however, may result in longer periods of supervision in the community, since the supervision period ordered for a felony crime may be longer and applied more often than for the misdemeanor crime. Longer supervision periods also may result in additional revocations of probation or post-release supervision, leading to an increased need for prison or jail bed space to house violators. The impact of the proposed legislation on community corrections programs and probation revocations cannot be quantified.

If the proposal is adopted, felony convictions under § 18.2-174 would not be covered by the sentencing guidelines as the primary (most serious) offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the sentencing guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) reports that for FY2002, there was one juvenile committed to Juvenile Correctional Centers (JCC) for violation of § 18.2-174 and none for FY2003 (no information was provided whether the commitment also involved a predicate offense specified in the proposal). If the proposal is enacted, the minimum assigned under the Department's Length of Stay (LOS) guidelines would change from 3-6 months to 6-12 months.

Additionally, because the proposal elevates the penalty to a Class 6 felony under certain circumstances, a juvenile adjudicated for this crime would be eligible automatically for commitment, since existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication or has accumulated a total of four Class 1 misdemeanor adjudications. However, DJJ does not anticipate an increase in the need for JCC beds as the result of this proposal.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$4,435 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 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 \$22,606 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.***
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 \$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.***

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5. The portion of the proposed language that discusses the relationship between a predicate crime defined in Chapter 4 of Title 18.2 and the new felony is similar to that found in § 18.2-53.1. Therefore, this analysis was guided by the principles of *Reed v. Commonwealth* 239 Va. 594 (1990) when deciding which cases would be eligible for the proposed penalty enhancement. The judgment in *Reed* was that in cases involving compound and predicate offenses, an inconsistent verdict (conviction for the compound offense and acquittal for the predicate offense) is not grounds for overturning the conviction for the compound offense.

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 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, 2002; for violent offenses, this rate was 9.0%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons, sentenced in FY2003 to local jails; this rate was 89.7%. 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 FY2003, with no accompanying felony conviction; this rate was 39.66%.
3. Sentences for persons affected by the felony provisions under the proposed legislation were randomly drawn from sentences for persons convicted of fraud offenses with a Class 6 felony penalty structure. Given the violent nature of the predicate crimes involved, if the offender was sentenced for a predicate crime, it was assumed that observed sentences would fully account for the additional offense of impersonation. If the offender was charged with, but not convicted of, a predicate crime, it was assumed that the randomly drawn sentence would be used only if it exceeded the observed sentence.

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