



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1987

(Patron – Cox)

LD#: 07-8307284

Date: 12/15/2006

Topic: Eluding police—driving while intoxicated or resulting in physical injury

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$464,377 (18 beds)
- **Local Adult Correctional Facilities:**  
\$7,083 (1 bed)
- **Adult Community Corrections Programs:**  
None

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### Summary of Proposed Legislation:

The proposal amends § 46.2-817 to increase the penalty for eluding a police officer in certain circumstances. Under the proposal, the penalty for disregarding a police command to stop a motor vehicle and driving in such a way as to endanger others is increased from a Class 6 felony to a Class 5 felony if the offender was driving while intoxicated or the police pursuit resulted in bodily injury to another person. Punishment under the proposal includes a six-month mandatory term of incarceration. Furthermore, the proposal specifies that if the incident results in the death of another person, the offender is guilty of felony murder under § 18.2-33.

#### Analysis:

According to calendar year (CY) 2004 and CY2005 Pre-Sentence Investigation (PSI) data, 73 offenders were convicted of a felony for eluding police (with endangerment to others) and an additional charge of driving while intoxicated (this figure excludes cases that involved a more serious charge). Nearly all of these offenders were sentenced to an active term of incarceration. Nearly half (49%) were given a local-responsible (jail) term (median sentence: six months). Another 45% received a state-responsible (prison) term for which the median sentence was 1.7 years. Of the 73 cases, there was one offender who received the maximum penalty of five years for eluding police with endangerment.

During the same time period, 52 offenders were convicted of a felony for eluding police (with endangerment to others) that included a report of physical injury. The majority of these cases involved a more serious charge, such as manslaughter, malicious wounding, or assault of a law enforcement officer. For the 10 cases that did not involve a more serious offense, 30% of the offenders were ordered to serve a jail term (median sentence: six months) and 60% were committed to prison, where the median sentence was 3.5 years. One of the 10 offenders received the full five-year maximum penalty as an active term of incarceration.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed § 46.2-817 increases the statutory penalty range and adds a mandatory minimum term of incarceration for eluding a police officer in certain circumstances. The proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be 18 beds by FY2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$464,377.

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

FY08	FY09	FY10	FY11	FY12	FY13
3	9	12	15	17	18

**Local adult correctional facilities.** The proposal is expected to have a small impact on the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be a net increase of one bed statewide by FY2013 (state costs: \$7,083; local costs: \$6,549).

**Adult community corrections resources.** The proposal is not expected to increase the need for adult community corrections resources and will likely delay the need for services for some offenders affected by the proposal, as they will be serving longer incarceration terms than those currently served by offenders convicted of this crime.

**Virginia's sentencing guidelines.** Felony convictions under § 46.2-817(B) are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the impact on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the impact on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$464,377 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.**

**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 2006.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2006.
3. Cost per prison bed was assumed to be \$25,709 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 FY2005 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.37 per day or \$10,362 per year. The local cost was calculated by using the daily expenditure cost of \$59.24 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 \$26.23 per day or \$9,581 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, 2007, 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 were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2005. For nonviolent crimes, this rate was 11.53%.
3. To gauge the impact of proposed penalty structure, it was assumed that the distribution of sentences under the proposed Class 5 felony will be similar to the distribution of sentences for felony hit and run with victim injury, a Class 5 felony defined in current *Code*, with an adjustment made to account for the proposed 6-month mandatory minimum sentence.

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