



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 368

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Watkins)

LD#: 08-0902348

Date: 2/26/2008

Topic: Eluding police

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be negligible
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
State: None (\$0)
Local: Cannot be determined

- **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 from a Class 6 to a Class 4 felony if, during pursuit of the offender, an officer is killed or suffers serious bodily injury that results in permanent and significant physical impairment. In addition, the proposal increases the penalty for disregarding a police signal to stop without endangerment to others from a Class 3 to a Class 1 misdemeanor.

The 1999 General Assembly increased the penalty for disregarding a police command to stop from a Class 4 misdemeanor to the present Class 3 misdemeanor; if the person drove in such a way as to endanger others, the penalty was increased from a Class 1 misdemeanor to a Class 6 felony. Enactment of these provisions was delayed until July 1, 2000. The 2000 General Assembly added affirmative defense language to the paragraph governing the felony offense. The 2002 General Assembly required that the suspended license provision, already applicable for misdemeanor convictions, be applied to felony convictions.

Analysis:

According to fiscal year (FY) 2001 through FY2007 Pre-Sentence Investigation (PSI) data, 3,074 offenders have been convicted of a felony for eluding police with endangerment to others. Of the total, one case was recorded as involving the death of an officer; the defendant in this case was convicted of second degree murder in addition to felony eluding and was sentenced to 40 years in prison.

These data indicate that six felony eluding cases during this time period involved serious physical injury of an officer. In each of these cases, the offender was convicted of a more serious felony (three for malicious wounding of a law-enforcement officer; two for attempted capital murder of a law-enforcement officer; and one for hit and run with injury [a Class 5 felony]). All of the offenders received a state-responsible (prison) term with a median sentence of 21 years.

According to the General District Court Automated Information System (CAIS) for calendar years 2005 and 2006, there were 228 persons convicted of a misdemeanor for eluding police. For 30 of these, the misdemeanor eluding was the most serious offense at conviction. Currently, this is a Class 3 misdemeanor punishable by fine only.

Impact of Proposed Legislation:

State adult correctional facilities. Because it increases the penalty for an existing Class 6 felony to a Class 4 felony under certain circumstances, the proposal may increase the need for state-responsible (prison) beds. Data indicate that one felony eluding case over a seven-year period involved the death of an officer and this offender was convicted of second degree murder. During the same seven-year period, six felony eluding cases resulted in serious physical injury to an officer. These offenders were convicted of more serious felonies and only one received a sentence of less than 12 years. While the impact of the proposal cannot be determined, any impact is likely to be negligible.

Local adult correctional facilities. The proposal increases the penalty for disregarding a police command to stop (without endangerment) from a Class 3 to a Class 1 misdemeanor. Because the offense is currently punishable by a fine only, the impact on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. Because it will not result in additional felony convictions, the proposal is not expected to increase the need for state community corrections resources. The proposed increase in misdemeanor penalty for disregarding a police command to stop (from a fine only to a jail sentence up to 12 months) may increase demand for local community corrections programs. However, the impact on local community corrections resources cannot be quantified.

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. The Department of Juvenile Justice (DJJ) reports that for FY2006 and FY2007, there were 39 juveniles committed to juvenile correctional centers (JCC) for felony violation of § 46.2-817(B). Although unable to determine whether any of these offenses involved death or serious injury of law-enforcement officer, DJJ indicates that Class 4 and 6 felonies are placed on the same level under the Department's Length of Stay (LOS) guidelines; therefore, for this portion of the proposed legislation, duration of commitment in the JCCs will not be affected. Nonetheless, the impact on 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.

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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