



## 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#:** 08-0837348

**Date:** 1/23/2008

**Topic:** Eluding police

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$16,887 (approximately 1 bed)
- **Local Adult Correctional Facilities:**  
Negligible
- **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. Under the proposal, the penalty for disregarding a police command to stop a motor vehicle and driving in such a way is the proximate cause of the death of a law-enforcement officer or a third-party person is increased from a Class 6 felony to a Class 4 felony. The proposal also adds language that a prosecution under this section does not prohibit prosecution under other provisions in the *Code*.

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 these, 15 involved a death. For these 15 cases, the felony conviction for eluding police was nearly always an additional offense to a more serious felony charge; the most serious offense was typically a homicide, such as involuntary or voluntary manslaughter. For 2 of the 15, however, eluding police was the most serious offense; each offender was given a local-responsible (jail) term (3 months and 12 months, respectively).

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 is expected to increase the need for state-responsible (prison) beds. The impact is estimated to be approximately one bed by FY2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$16,887.

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

FY09	FY10	FY11	FY12	FY13	FY14
0	0	0	0	1	1

**Local adult correctional facilities.** Increasing the punishment for eluding police with endangerment that results in death from a Class 6 to a Class 4 felony would likely result in a shift of some offenders from jail to prison, because some offenders currently receiving a jail sentence would instead receive a prison term under the higher felony penalty in the proposal. The proposal is expected to have a negligible impact on the future need for local-responsible (jail) beds.

**Adult community corrections resources.** The proposal is not expected to increase the need for state community corrections resources and will likely delay the need for services for some felony 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.** 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 injury or death, 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.

**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 is \$16,887 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 of Public Safety's Committee on Inmate Forecasting in 2007.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2007.

3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*** Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2008, 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, 2006. For nonviolent crimes, this rate was 11.73%.
3. To gauge the impact of proposed penalty structure, it was assumed that the distribution of sentences under the proposed Class 4 felony will be similar to the distribution of sentences for involuntary vehicular manslaughter, a Class 5 felony defined in current *Code*; both Class 4 and 5 crimes carry the same statutory maximum of ten years.

elude04\_0837