



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2281

(Patron – Hurt)

Date Submitted: 01/02/03

LD #: 03-4197778

Topic: Using a firearm in the commission of a simple assault or assault and battery

Proposed Change:

The proposal amends § 18.2-57(A) to make it a Class 6 felony to use of a firearm in the commission of a simple assault or assault and battery.

Currently, under § 18.2-57, it is a Class 1 misdemeanor to commit a simple assault or assault and battery. Intentionally selecting an assault victim because of his race, religious conviction, color or national origin is a Class 1 misdemeanor when no injury results and a Class 6 felony if the victim suffers bodily injury; however, these “bias” crimes carry a mandatory, minimum penalty of 6 months confinement, 30 days of which cannot be suspended. Assault or assault and battery against a law-enforcement officer is a Class 6 felony that carries a six-month mandatory, minimum term. Battery against a teacher or school employee is a Class 1 misdemeanor that carries a mandatory minimum of 15 days (2 days of which cannot be suspended) if no weapon is used; using a firearm or other weapon to commit battery on a school employee increases the mandatory, minimum penalty to 6 months.

Current Practice:

Based on FY2001 and FY2002 Local Inmate Data System (LIDS) data, 7,285 offenders held pre- or post-trial in jail were convicted of a Class 1 misdemeanor under § 18.2-57(A). Nearly all of these offenders (98%) were convicted for an assault not associated with the race, religious conviction, color or national origin of the victim. Of these, 93% received a local-responsible (jail) sentence, with a median term of one month. Approximately 1% of the offenders received a state-responsible (prison) term because of accompanying felony charges.

Less than 2% (143 cases) of simple assaults were related to the race, religious conviction, color or national origin of the victim. More than 94% of the convictions in these cases resulted in a local-responsible sentence, with a median incarceration period of one month.

Data available to the Commission on misdemeanor offenses is limited to offenders who were held pre- or post-trial in jail; therefore, it is possible that there were cases that are not reflected in the data.

As misdemeanors, convictions under § 18.2-57(A) are not covered by the sentencing guidelines as the primary (or most serious) offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Impact of Proposed Legislation:

By increasing the penalty for assault and assault and battery committed with a firearm, the proposal may have an impact on state-responsible (prison) beds. Currently, offenders who use a firearm in the commission of an assault or assault and battery may be prosecuted other statutes, such as § 18.2-282(A), for brandishing or pointing a firearm (first offense is a Class 1 misdemeanor, third or subsequent conviction is a Class 6 felony). However, criminal justice databases available to the Commission do not contain information on the number of incidences that may be affected by the proposal. Data cannot distinguish whether these misdemeanor assaults were committed with use of a weapon or whether additional convictions resulted. Therefore, the magnitude of the expected impact cannot be computed from existing data sources.

If there is an impact on state-responsible bed space, there will be a partially offsetting impact on local-responsible (jail) bed space. The state's share of a jail inmate is about half (52%) of the cost for a prison inmate for the same length sentence.

The anticipated impact on community corrections programs is expected to be twofold. First, there should be a shift from local to state-funded programs. And second, on average, the need for a program placement will be delayed by about two months (the difference in time actually served for the current misdemeanor versus the time estimated to be served under the proposed felony). A third factor may impact on community corrections programs; that is, the supervision for a felony crime may be longer than for the comparable crime when it was defined as a misdemeanor. For convictions for a Class 6 felony similar to the proposed provision, periods of supervision periods ranged from none to an indefinite term of supervision.

Additionally, there may be an increased need for prison or jail bed space based on probation or post-release supervision revocations. A judge can impose and suspend more time for a felony than a misdemeanor, and, consequently, if an offender violates release conditions, the potential amount of time that a judge may re-impose for a revocation is longer as well. For convictions of the previously described Class 6 felony, the suspended time ranged from none to four years.

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

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.