



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1105

(Patron – Moran)

Date Submitted: 12/31/03

LD #: 04-7149424

Topic: Malicious bodily injury to probation and parole officers

Proposed Change:

The proposal amends § 18.2-51.1 to make malicious or unlawful bodily injury of any probation and parole officer appointed pursuant to §§ 53.1-143 or 16.1-237 subject to the same penalties that apply when the victim is a law enforcement officer, firefighter or emergency medical service provider.

Prior to July 1, 1997, malicious wounding of a law enforcement officer was a Class 3 felony punishable by imprisonment for a period of five to twenty years. Since July 1, 1997, malicious wounding of a law enforcement officer is punishable by imprisonment for a period of not less than five years nor more than thirty years and requires a two-year mandatory minimum sentence. Unlawful wounding of a law enforcement officer is a Class 6 felony, but a one-year mandatory minimum sentence is required. Under subsection C of the current § 18.2-57, assault and battery of a law enforcement officer is punishable as a Class 6 felony and carries a mandatory, minimum term of confinement of six months.

According to the existing § 18.2-55, it is unlawful for any accused prisoner, probationer or parolee to knowingly inflict bodily injury upon a probation or parole officer engaged in the performance of his duty; violation is punishable as a Class 5 felony, but no mandatory minimum penalty is specified. This section of the *Code* was amended in 1999 to specify the powers and duties of probation and parole officers as defined in §§ 16.1-237 or 53.1-145. It was amended again in 2001 to ensure that local pretrial services officers and probation officers affiliated with a local community-based program would be afforded the same protection.

Data Analysis:

According to fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 53 offenders were convicted of inflicting bodily injury on a probation officer (as the primary offense) in violation of § 18.2-55; the majority of these individuals (83%) received prison terms, with a median sentence of two years.

During the same period, 60 offenders were convicted of malicious or unlawful wounding of a law enforcement officer under § 18.2-51.1 as the primary (most serious) offense in a sentencing event (see *Background Sentencing Information* below). Of the total, there were 23 convictions

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for malicious wounding of a law enforcement officer. Four offenders (17%) received local-responsible (jail) sentences, while the remaining 19 offenders (83%) were sentenced to state-responsible (prison) terms. The median prison sentence for the state-responsible cases was three years (excludes three cases sentenced for offenses committed prior to July 1, 1997). In addition to the malicious wounding convictions, 37 offenders were convicted of unlawful wounding of a law enforcement officer. Of these, 8 (22%) were sentenced to probation, 13 (35%) received local-responsible (jail) terms, and 16 (43%) received state-responsible (prison) terms, with a median sentence of 1.5 years. Another 693 offenders were convicted of assault and battery of a law enforcement officer, firefighter or correctional officer under § 18.2-57(C). Of these, over half (52%) received a local-responsible (jail) term; however, 42% received a state-responsible (prison) term, with a median sentence of 1.5 years. These data include attempted and conspired crimes.

Background Sentencing Information

Felony Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Assault by accused prisoner, probationer, etc (§ 18.2-55)	53	4%	13%	83%	2.0 yrs.
Malicious injury to law enforcement/rescue (§ 18.2-51.1)	23	0%	17%	83%	3.0 yrs.
Unlawful injury to law enforcement/rescue (§ 18.2-51.1)	37	22%	35%	43%	1.5 yrs.
Assault and battery - law enforcement (§ 18.2-57(C))	693	6%	52%	42%	1.5 yrs.

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database.

Impact of Proposed Legislation:

The proposed legislation may have an impact on the bed space needs of the Commonwealth. This proposal adds probation and parole officers to the list of potential assault victims covered by § 18.2-51.1, which requires mandatory minimum terms of confinement. While some cases involving bodily injury of a probation officer may already be covered under the existing § 18.2-55, this statute does not require a mandatory minimum sentence. Cases involving malicious injury of a probation officer could be prosecuted under existing provisions defining malicious injury as a Class 3 felony (§ 18.2-51). Data are insufficient to determine the number of malicious injury cases under § 18.2-51 that have involved a probation officer. To calculate the minimum potential impact of this proposal, it is assumed that cases of unlawful injury of a probation officer will result in conviction under the expanded provisions of § 18.2-51.1 and the application of the one-year mandatory minimum term. In this scenario, the net high state-responsible impact would be about 10 beds by FY2010.

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In addition, there will be an impact on local-responsible (jail) bed space; based on the same methodology, there will be an decreased need for four beds statewide, for a savings to the state of \$46,559 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional saving for the localities of \$31,683 for the same beds.

Virginia's sentencing guidelines cover convictions under §§ 18.2-51.1, 18.2-55 and 18.2-57(C) as well as attempts and conspiracies to commit any of those crimes. However, no adjustment to the guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) reports that the proposed change to § 18.2-51.1 could result in a Juvenile Correctional Center (JCC) bed space impact. Currently, a ward committed to DJJ for unlawful injury under § 18.2-51.1, would have a minimum Length of Stay (LOS) range of 6 to 12 months. If a ward were to be committed for the same act, under the malicious injury portion of the proposed § 18.2-51.1, the minimum LOS range would become 18 to 24 months. DJJ, however, does not believe that the bed space needs of its JCC's will be affected by the proposal as they are aware of only one assault on a probation officer at a Court Services Unit (CSU) since 1977.

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

FY05	FY06	FY07	FY08	FY09	FY10
3	8	9	9	10	10

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY05	FY06	FY07	FY08	FY09	FY10
-2	-4	-4	-4	-4	-4

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$226,825 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 felony sentences were based on forecasts developed by the Secretary's Committee on Inmate Forecasting in August 2003.
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 FY2002 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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Assumptions relating to sentence lengths

1. The impact of the proposed legislation on criminal provisions, 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 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 assault offenses the rate was 9.18%. 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%.
3. Sentences for persons convicted of § 18.2-55 were assumed to be sentenced under the proposed § 18.2-51.1 with its mandatory minimum of one year imposed.

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