



## Impact Analysis on Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 184

(Patron – Oder)

Date Submitted: 12/16/03

LD #: 04-7404444

Topic: Malicious bodily injury to a law enforcement officer

#### Proposed Change:

The proposal amends § 18.2-51.1 to include malicious or unlawful bodily injury of a law enforcement officer by the use of an infectious biological substance or radiological agent as defined in § 18.2-52.1.

Since July 1, 1997, malicious wounding of a law enforcement officer by any means, including by caustic substance or fire as defined in § 18.2-52, is punishable by imprisonment for 5 to 30 years, with a two-year mandatory minimum sentence. Prior to July 1, 1997, malicious wounding of a law enforcement officer was a Class 3 felony (5 to 20 years). Unlawful wounding of a law enforcement officer is a Class 6 felony and carries a one-year mandatory minimum sentence.

Currently, under § 18.2-52.1 to possess an infectious biological substance or radiological agent with the intent to injure is a Class 5 felony, and to use such a material with intent to injure is a Class 4 felony. The 2002 General Assembly added radiological agents to this *Code* section.

#### Data Analysis:

According to fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, there were no convictions under § 18.2-52.1 for possessing an infectious biological substance, or damaging a facility containing such a substance, with intent to injure another. However, 60 offenders were convicted of malicious or unlawful wounding of a law enforcement officer under § 18.2-51.1 as the primary offense in a sentencing event (see *Background Sentencing Information* below). There were 23 convictions 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).

The remaining 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. These data include attempted and conspired crimes.

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The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

**Background Sentencing Information**

Felony Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Malicious injury to law enforcement/rescue personnel	23	0%	17%	83%	3.0 yrs.
Unlawful injury to law enforcement/rescue personnel	37	22%	35%	43%	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 expands the existing statute to include additional means of injuring a law enforcement officer, firefighter, or rescue personnel in violation of § 18.2-51.1. The databases available to the Commission are insufficient to provide information on the number of specific incidences that may be affected by the proposed legislation, but the impact of the proposal is likely to be small. Data did not reveal any convictions under § 18.2-52.1 for possessing an infectious biological, or damaging a related facility, with intent to injure another.

This proposal expands the means by which a crime could be committed in violation of § 18.2-51.1, but not the nature of the crime, therefore new crimes under the proposal would be covered by the sentencing guidelines, as well as attempts and conspiracies to commit any of those crimes. 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 this crime is unlikely to be committed by juveniles.

**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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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