



## Impact Analysis on Proposed Legislation

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*Virginia Criminal Sentencing Commission*

### Senate Bill No. 331

*(Patron – Stolle)*

**Date Submitted:** 01/06/04

**LD #:** 04-1123820

**Topic:** Assault and battery in the commission of a larceny

#### **Proposed Change:**

The proposal adds § 18.2-106.1 to define two new assault crimes. The proposal makes it a Class 4 felony to assault or assault and batter another person during the commission of a larceny; if bodily injury results from the assault, the proposal establishes a felony punishable by a term of 2 to 20 years.

Currently, an assault committed during a larceny can be prosecuted under existing assault statutes. Under § 18.2-57, an assault or assault and battery is a Class 1 misdemeanor. The same crime committed on a law enforcement officer is a Class 6 felony (1 to 5 years), with a six-month mandatory minimum. Under § 18.2-51, a non-malicious assault resulting in bodily injury is a Class 6 felony (1 to 5 years); this crime is elevated to a Class 3 felony (5 to 20 years) when committed with malicious intent. These same crimes committed on a law enforcement officer carry a one-year mandatory minimum if it is committed without malicious intent and a two-year mandatory minimum if it is committed with malicious intent. In addition, under § 18.5-95(i), larceny of \$5 or more from a person is felony punishable by a 1 to 20-year term. Assault during the commission of a felony (§ 18.2-53) is a Class 6 felony (1 to 5 years).

#### **Data Analysis:**

Based on two recent years of data (fiscal year (FY) 2000 and FY2001 Pre/Post Sentence Investigation data), there were 210 offenders convicted of a larceny and an accompanying assault (see *Background Sentencing Information* below). While sentencing patterns varied according to the specific combination of larceny offenses and assault offenses committed, 84.5% of these offenders, overall, were sentenced to some term of active incarceration, with 65.3% receiving a state-responsible (prison) sentence. The most common combination coupled a misdemeanor assault with grand larceny (15.7%), resulting in approximately 85% receiving some incarceration. Of those, half received a state responsible sentence, with a median sentence of two years. Additional offenses may accompany the combinations of larcenies and assaults in the *Background Sentencing Information* table.

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**Background Sentencing Information**

Larceny Offense	Assault Offense	Number of Cases	% No Incarceration	% Local Responsible Incarceration	% State Responsible Incarceration	Median State-Responsible Sentence
Shoplift <\$200, 3rd (Class 6 felony)	Simple Assault (Class 1 misd)	8	0%	37.5%	62.5%	2.3 yrs.
Shoplift > \$200 (unclassified felony 1-20 yrs.)	Simple Assault (Class 1 misd)	4	50%	25%	25%	2.2 yrs.
Grand larceny, not from person (unclassified felony 1-20 yrs.)	Simple Assault (Class 1 misd)	33	15.2%	42.4%	42.4%	2.0 yr.
Larceny from person, \$5 or more (unclassified felony 1-20 yrs.)	Simple Assault (Class 1 misd)	17	29.4%	35.3%	35.3%	3.3 yr.
Grand larceny, type not clear (unclassified felony 1-20 yrs.)	Simple Assault (Class 1 misd)	2	0%	0%	100%	3.3 yr.
Petit larceny - 3rd or sub (Class 6 felony)	Simple Assault (Class 1 misd)	14	14.3%	35.7%	50%	1.7 yrs.
Auto theft - grand larceny (unclassified felony 1-20 yrs.)	Simple Assault (Class 1 misd)	4	0%	25%	75%	2.5 yrs.
Unauth use of auto, \$200 or more (Class 6 felony)	Simple Assault (Class 1 misd)	7	0%	28.6%	71.4%	2.8 yrs.
Receive stolen goods, \$200 or more (unclassified felony 1-20 yrs.)	Simple Assault (Class 1 misd)	1	0%	0%	100%	5 yrs.
Shoplift, <\$200, 1st (Class 1 misd)	Simple Assault (Class 1 misd)	3	66.7%	33.3%	0%	NA
Shoplift, <\$200, 2nd (unclassified misd)	Simple Assault (Class 1 misd)	1	0%	0%	100%	1 yr.
Petit larceny (Class 1 misd)	Simple Assault (Class 1 misd)	16	18.8%	31.3%	50%	2.6 yrs.
Receive stolen property, <\$200 (Class 1 misd)	Simple Assault (Class 1 misd)	1	100%	0%	0%	NA
Petit larceny, type not clear	Simple Assault (Class 1 misd)	1	0%	0%	100%	1 yr.
Credit card theft (unclassified felony 1-20 yrs.)	Simple Assault (Class 1 misd)	1	100%	0%	0%	NA
Credit card fraud, \$200 or more in 6 mo. (Class 6 felony)	Simple Assault (Class 1 misd)	1	100%	0%	0%	NA
Welfare fraud, \$200 or more (unclassified felony 1-20 yrs.)	Simple Assault (Class 1 misd)	1	0%	0%	100%	2.25 yrs.
Obtain money by false pretenses, \$200 or more (unclassified felony 1-20 yrs.)	Simple Assault (Class 1 misd)	1	0%	0%	100%	1.3 yrs.

Data Source: (1) FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database.

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**Background Sentencing Information continued**

Larceny Offense	Assault Offense	Number of Cases	% No Incarceration	% Local Responsible Incarceration	% State Responsible Incarceration	Median State-Responsible Sentence
Shoplift <\$200, 3rd (Class 6 felony)	Simple Assault, law enfor. (Class 6 felony)	1	0%	0%	100%	2 yrs.
Shoplift, <\$200, 3rd (Class 6 felony)	Simple Assault, law enfor. (Class 6 felony)	19	5.3%	15.8%	78.9%	4 yrs.
Larceny from person, \$5 or more (unclassified felony 1-20 yrs.)	Simple Assault, law enfor. (Class 6 felony)	3	0%	0%	100%	3 yrs.
Petit larceny – 3rd or sub (Class 6 felony)	Simple Assault, law enfor. (Class 6 felony)	8	0%	25%	75%	4.5 yrs.
Auto theft - grand larceny (unclassified felony 1-20 yrs.)	Simple Assault, law enfor. (Class 6 felony)	5	20%	0%	80%	2 yrs.
Unauth use of auto, \$200 or more (Class 6 felony)	Simple Assault, law enfor. (Class 6 felony)	3	0%	66.7%	33.3%	3.6 yrs.
Receive stolen goods, \$200+ (unclassified felony 1-20 yrs.)	Simple Assault, law enfor. (Class 6 felony)	3	0%	0%	100%	1.4 yrs.
Shoplift, <\$200, 1st (Class 1 misd)	Simple Assault, law enfor. (Class 6 felony)	1	100%	0%	0%	NA
Shoplift, <\$200, 2nd (unclassified misd)	Simple Assault, law enfor. (Class 6 felony)	1	0%	0%	100%	1 yr.
Petit larceny (Class 1 misd)	Simple Assault, law enfor. (Class 6 felony)	7	0%	14.3%	85.7%	1.9 yrs.
Credit card theft (unclassified felony 1-20 yrs.)	Simple Assault, law enfor. (Class 6 felony)	3	0%	33.3%	66.7%	6.8 yrs.
Forgery of credit card (Class 5 felony)	Simple Assault, law enfor. (Class 6 felony)	1	0%	100%	0%	NA
Utilities, TV, \$200 or more (Class 6 felony)	Simple Assault, law enfor. (Class 6 felony)	1	0%	0%	100%	5 yrs.
Obtain money by false pretenses, \$200 or more (unclassified felony 1-20 yrs.)	Simple Assault, law enfor. (Class 6 felony)	1	0%	0%	100%	1 yr.
Shoplift > \$200 (unclassified felony 1-20 yrs.)	Stab, cut, wound, without mal. intent (Class 6 felony)	3	33.3%	66.7%	0%	NA
Grand larceny, not from person (unclassified felony 1-20 yrs.)	Stab, cut, wound, without mal. intent (Class 6 felony)	8	12.5%	25%	62.5%	4 yrs.
Larceny from person, \$5 or more (unclassified felony 1-20 yrs.)	Stab, cut, wound, without mal. intent (Class 6 felony)	3	0%	0%	100%	16 yrs.

Data Source: (1) FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database.

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**Background Sentencing Information continued**

Larceny Offense	Assault Offense	Number of Cases	% No Incarceration	% Local Responsible Incarceration	% State Responsible Incarceration	Median State-Responsible Sentence
Petit larceny - 3rd or sub (Class 6 felony)	Stab, cut, wound, without mal. intent (Class 6 felony)	1	0%	0%	100%	4.3 yrs.
Auto theft - grand larceny (unclassified felony 1-20 yrs.)	Stab, cut, wound, without mal. intent (Class 6 felony)	2	0%	0%	100%	7.6 yrs.
Unauth use of auto, \$200 or more (Class 6 felony)	Stab, cut, wound, without mal. intent (Class 6 felony)	3	33.3%	33.3%	33.3%	21 yrs.
Receive stolen goods, \$200+ (unclassified felony 1-20 yrs.)	Stab, cut, wound, without mal. intent (Class 6 felony)	3	0%	0%	100%	3 yrs.
Shoplift, <\$200, 1st (Class 1 misd)	Stab, cut, wound, without mal. intent (Class 6 felony)	1	0%	100%	0%	NA
Petit larceny (Class 1 misd)	Stab, cut, wound, without mal. intent (Class 6 felony)	8	0%	37.5%	62.5%	3 yrs.
Unauthorized use, < \$200 (Class 1 misd)	Stab, cut, wound, without mal. intent (Class 6 felony)	2	0%	50%	50%	4 yrs.
Auto theft - grand larceny (unclassified felony 1-20 yrs.)	Non-mal. inj. to law enf. (Class 6 felony)	1	0%	0%	100%	3 yrs.
Receive stolen goods, \$200 or more (unclassified felony 1-20 yrs.)	Non-mal. inj. to law enf. (Class 6 felony)	1	0%	0%	100%	3 yrs.
Petit larceny (Class 1 misd)	Assault during commission of felony (Class 1 misd)	1	0%	0%	100%	6 yrs.

Data Source: (1) FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database.

**Impact of Proposed Legislation:**

The proposed legislation raises the penalty for certain assault crimes. Application of sentences for similar crimes indicates that the proposal would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, the net high state-responsible impact would be about two beds.

In addition, there will be an impact on local-responsible (jail) bed space; based on the same methodology, there will be an increased need for less than one bed statewide, for a cost to the state of \$661 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost for the localities of \$450 for the same partial bed.

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The anticipated impact on community corrections programs is expected to be twofold. First, there may be a shift from local to state-funded programs. And second, on average, the need for a program placement will be delayed by about seven 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 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 4 felony similar to the proposed provision, most (66%) had sentences that included supervised probation; of those, the supervision periods ranged from one month to an indefinite term of supervision, with a median of three years 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 4 felony, all or part of the sentence was suspended for 91%; of those, the median suspended term was about four years.

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

The Department of Juvenile Justice (DJJ) reports that if the proposal is enacted, the minimum confinement assigned under the Department's Length of Stay (LOS) guidelines would change from 3-6 months to 6-12 months for the Class 4 felony and from 3-6 months to 12-18 months for the proposed unclassified felony with a statutory maximum of 20 years. Additionally, because the proposal creates a felony for an assault committed during a larceny, a juvenile adjudicated for this crime would be eligible automatically for commitment if the proposed legislation is adopted; existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication or has accumulated a total of four Class 1 misdemeanor adjudications. DJJ believes that the proposal may affect Juvenile Correctional Center (JCC) bed space needs, but is unable to determine the extent of the impact.

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

FY03	FY04	FY05	FY06	FY07	FY08
1	1	1	1	2	2

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$37,252 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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**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 state-responsible sentences were based on forecasts approved by the Secretary's Committee on Inmate Forecasting in August 2003. New cases representing local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the Local Inmate Data System (LIDS) database.
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.***

**Assumptions Relating to Sentence Lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. Release dates for state-responsible felony convictions 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 the offense of assault, this 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%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants sentenced in FY2003 with no accompanying felony conviction; this rate was 39.66%.
3. Sentences for persons convicted of a petit larceny (not from person) accompanied by a misdemeanor assault were assumed to be affected by the proposal. To estimate the impact on these offenders, sentences were randomly drawn from sentences for persons convicted of the Class 4 felonies. Given that these offenders, under the proposal, would be guilty of a felony assault and under current law had been sentenced to incarceration, the projected sentence was applied only if it exceeded the actual sentence in the case.

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