



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2775

(Patron – Janis)

LD#: 07-3090348

Date: 12/19/06

Topic: Assault in the commission of a larceny

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$1,353,742 (53 beds)
- **Local Adult Correctional Facilities:**
-\$242,352 (-23 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposal adds § 18.2-109.1 to define a new felony called aggravated larceny. Under the proposal, any person who commits an assault of assault and battery on another during the commission of a larceny (not from a person) would be guilty of a Class 6 felony if the value of the stolen goods were less than \$200 and a Class 5 felony if the goods were valued at \$200 or more.

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) and carries a six-month mandatory minimum term. 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 committed without malicious intent and a two-year mandatory minimum if committed with malicious intent. In addition, under § 18.5-95(i), larceny of \$5 or more from a person or larceny of \$200 or more not from a person are felonies punishable by a 1 to 20-year term. Wounding a person while committing a felony (§ 18.2-53) is, itself, a Class 6 felony (1 to 5 years).

Analysis:

According to the Local Inmate Data System (LIDS), which contains information on all persons held in local and regional jails in Virginia, 6,258 persons were convicted during calendar year (CY) 2004 and CY2005 of a Class 1 misdemeanor assault or assault and battery under § 18.2-57(A). Most of the offenders held pre- or post-trial in jail received an active term of incarceration for the offense. The median jail sentence was approximately two months.

According to fiscal year (FY) 2005 and FY2006 Sentencing Guidelines data, numerous offenders were sentenced for specific combinations of larceny and assault offenses. For example, 58 offenders were sentenced for grand larceny (property or shoplifting) plus an assault. Most of these offenders received an active term of incarceration to serve. More than 26% were given a local-responsible (jail) term

(median sentence of six months), while nearly 64% were given a state-responsible (prison) term. For those committed to prison, the median sentence was two years.

Additionally, 20 offenders were convicted of felony assault coupled with a misdemeanor larceny offense. In four of these cases, the assault was a Class 3 felony; one offender received a six-month jail term and the other three offenders were sentenced to, respectively, 1.5, 2, and 3.5 years in prison. In the remaining 16 cases, the assault was a Class 6 felony. While 31% of these offenders were given jail terms (median sentence of six months), more than half (56%) were given prison terms for which the median sentence was 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates two new felony offenses, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. Additionally, there may be an increased need for prison bed space based on probation 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.

Under the proposal, however, an offender guilty of a felony larceny (currently punishable by imprisonment of 1 to 20 years) could be convicted of aggravated larceny if he commits an assault, in which case he would be guilty of a Class 5 felony (1 to 10 years).

The impact on state-responsible (prison) beds is estimated to be 53 beds by FY2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,353,742.

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

FY08	FY09	FY10	FY11	FY12	FY13
18	36	44	49	51	53

Local adult correctional facilities. The proposal will likely reduce the future need for local-responsible (jail) beds, as some offenders who historically received a jail sentence would be required to serve a prison term under the proposal. The impact on local-responsible (jail) beds is estimated to be a net reduction of 23 beds statewide by FY2013 (state savings: \$242,352; local savings: \$224,085).

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

FY08	FY09	FY10	FY11	FY12	FY13
-7	-14	-18	-21	-22	-23

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections resources cannot be quantified.

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

Juvenile correctional centers. Because the proposal could increase the penalty for certain acts from a misdemeanor to a felony, it could result in additional commitments to the Department of Juvenile

Justice (DJJ). 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. If a juvenile were committed to DJJ for the proposed felony offense, the minimum confinement assigned under the Department's Length of Stay (LOS) guidelines would be 6 to 12 months. The number of juveniles who may be affected by the proposal cannot be determined. Therefore, DJJ is not able to assess the impact of the proposal on Juvenile Correctional Center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal may have an impact on the bed space needs of juvenile detention facilities, but the impact cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,353,742 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's Committee on Inmate Forecasting in 2006.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2006.
3. Cost per prison bed was assumed to be \$25,709 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 FY2005 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.37 per day or \$10,362 per year. The local cost was calculated by using the daily expenditure cost of \$59.24 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 \$26.23 per day or \$9,581 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*
5. The impact of the proposed legislation, which would be effective on July 1, 2007, is phased in to account for case processing time.

Assumptions relating to sentence lengths

1. 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, 2005. For larceny cases, this rate was 11.65%.
2. To gauge the impact of proposed penalty structure, existing offenses in the *Code of Virginia* with penalty structures matching those proposed were analyzed. It was assumed that the distribution of sentences for aggravated larceny as proposed will be similar to the distribution of sentences for convictions involving petit larceny (third or subsequent conviction), which is punishable by imprisonment of 1 to 5 years.

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