



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 504

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Stuart)

LD#: 08-0838333

Date: 1/23/2008

Topic: Assault and battery of a Commonwealth's Attorney

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$208,903 (8 beds)
- **Local Adult Correctional Facilities:**
\$29,424 (3 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends § 18.2-57 to make assault or assault and battery of a Commonwealth's attorney or an assistant Commonwealth's attorney subject to the same penalties that apply when the victim is a law enforcement officer, firefighter, emergency medical service provider or judge.

Since July 1, 1997, assault of a law enforcement officer has been a Class 6 felony with a six-month mandatory minimum term of confinement; the 2006 General Assembly extended these penalties to cover cases involving assault of a judge. Currently, under § 18.2-57(A), simple assault or assault and battery of a person who is not a law enforcement officer, firefighter, emergency medical service provider, or judge is a Class 1 misdemeanor.

Unlawful injury of a law enforcement officer, firefighter, or emergency medical service provider, under § 18.2-51.1, is currently a Class 6 felony requiring a mandatory minimum term of one year.

Analysis:

The Compensation Board reports that there are 120 Commonwealth's attorneys, 603 full-time and 16 part-time assistant Commonwealth's attorneys in their budgetary database. The Compensation Board does not collect information on whether there have been any reported assaults on these prosecutors.

According to fiscal year (FY) 2006 and FY2007 Sentencing Guidelines data, 763 offenders were convicted of a felony under § 18.2-57(C) for an assault or an assault and battery of a law enforcement officer, firefighter, medical service provider or judge. These offenses were completed crimes and, in each case, the assault was the primary, or most serious, offense in a sentencing event. Most offenders (63%) received a local-responsible (jail) sentence. Approximately 36% were given a state-responsible (prison) term; for offenders committed to prison, the median sentence was 1.5 years. Three offenders were sentenced to the statutory maximum of five years.

According to the Local Inmate Data System (LIDS), which contains information on all persons held in local and regional jails in Virginia, 6,102 persons were convicted during calendar year (CY) 2005 and CY2006 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.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is expected to increase the need for state-responsible (prison) beds by expanding § 18.2-57(C) to include assaults of prosecutors. If prosecutors are assaulted, and these assaults result in a felony conviction, at the same rate as law enforcement officers, the proposal is expected to produce 13 to 14 additional felony convictions a year by FY2014. In this way, the proposal will increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be eight beds by FY2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$208,903.

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

FY09	FY10	FY11	FY12	FY13	FY14
1	4	6	7	7	8

Local adult correctional facilities. The proposal will also increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be three beds by FY2014 (state costs: \$29,424; local costs: \$29,515).

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

FY09	FY10	FY11	FY12	FY13	FY14
2	3	3	3	3	3

Adult community corrections resources. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal, but is likely to small.

Virginia's sentencing guidelines. Felony convictions under § 18.2-57(C) are covered by the sentencing guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$208,903 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 of Public Safety's Committee on Inmate Forecasting in 2007.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2007.
3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*** Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

Assumptions relating to offenders

1. The number of offenders convicted for assaulting prosecutors as proposed was estimated based on the rate at which offenders have been convicted for committing a simple assault against law enforcement officers currently covered by § 18.2-57(C). While the current provision also covers firefighters, emergency rescue personnel, correctional officers and judges, it was assumed that nearly all (95%) of the convictions under the existing provision resulted from assaults on law enforcement officers. According the State Police 2006 *Crime in Virginia* report, there were 17,678 total sworn officers in Virginia. Since there were 697 total convictions under § 18.2-57(C) during a recent two-year period, it was assumed that the number of law enforcement officers in 2006 resulted in approximately 331 convictions under § 18.2-57(C) that year $[(697/2)*.95]$. This is a rate of 1.9% $[331/17,678]$. If prosecutors are assaulted, and these assaults result in conviction, at the same rate as law enforcement officers, the proposal is expected to produce approximately 13.83 additional felony convictions a year by FY2014.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2008, is phased in to account for case processing time.
2. 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, 2006. For assaults, this rate was 11.2%.
3. To gauge the impact of proposed penalty structure, it was assumed that the distribution of sentences under the proposal will be similar to the distribution of sentences under the existing provision for assault and battery of a law enforcement officer under § 18.2-57(C).

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