



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### House Bill No. 2436 (Patron – Peace)

LD#: 09-8666676

Date: 1/14/2009

Topic: Assault and battery of emergency room personnel

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$2,286,103 (83 beds)
- **Local Adult Correctional Facilities:**  
\$219,563 (21 beds)
- **Adult Community Corrections Programs:**  
Cannot be determined

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

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#### Summary of Proposed Legislation:

The proposal amends § 18.2-57 to make assault or assault and battery of certain emergency room personnel subject to the same penalties that apply when the victim is a law enforcement officer (LEO), correctional officer, firefighter, rescue squad member, Department of Motor Vehicles officer, or judge. Specifically, the proposal includes physicians, physician's assistants, nurses, and nurse practitioners providing emergency health care in an emergency room of a hospital or clinic or on the premises of any other facility rendering emergency medical care. Assault of a law enforcement officer or other specified official is a Class 6 felony and carries a mandatory minimum penalty of six months. Currently, assault or assault and battery of a person who is not a law enforcement officer or other official specified in the statute is a Class 1 misdemeanor and does not require a mandatory minimum sentence.

Since 1999, the General Assembly has expanded this statute to cover corrections officers, game wardens, jail officers in local and regional facilities, all deputy sheriffs, volunteer firefighters and rescue squad members, judges, and full-time sworn members of the Department of Motor Vehicles enforcement division.

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#### Analysis:

Based on current data supplied by the Virginia Hospital & Healthcare Association, approximately 4,900 to 7,800 emergency room personnel in Virginia would be affected by the proposal. The number of assaults committed annually against these individuals is unknown.

According to fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data, 1,108 offenders were convicted of a felony for assault or assault and battery of a law enforcement officer, firefighter, etc., under § 18.2-57(C). In 860 of the cases, the assault was the primary, or most serious, offense. Of the 860 cases, 56% of the offenders received a local-responsible (jail) sentence with a median sentence of 7 months. For the 40% of offenders who were given a state-responsible (prison) term, the median sentence was 1.5 years.

According to calendar year (CY) 2006 and CY2007 General District Court Automated Information System (CAIS) data, there were 10,214 offenders convicted of misdemeanor assault and battery. Nearly half (48%) were sentenced to jail with a median term of 1 month. The remaining 52% were not given an active term of incarceration to serve after sentencing.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** The proposed legislation increases the statutory penalty for assault or assault and battery committed against certain emergency room personnel. If the above crimes are committed against these individuals at the same rate as law enforcement officers, the proposal is expected to produce about 140 additional felony convictions a year by FY2015. 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 83 beds by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,286,103.

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

FY10	FY11	FY12	FY13	FY14	FY15
31	61	73	79	82	83

**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 an average of about 21 beds by FY2015 (state costs: \$219,563; local costs: \$220,240).

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

FY10	FY11	FY12	FY13	FY14	FY15
20	21	21	21	21	21

**Adult community corrections programs.** 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 6 felons as well as misdemeanants. These changes are not expected to change the need for community corrections resources, although the expansion of mandatory minimums may affect the timing of when those resources may be needed. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal.

**Virginia's sentencing guidelines.** The sentencing guidelines cover violations of § 18.2-57(C) that are processed in Virginia's circuit courts. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** Because the proposal increases the penalty for certain acts from a misdemeanor to a felony, the proposal 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 additional juveniles who may be committed cannot be determined; therefore, the impact of the proposal on Juvenile Correctional Center (JCC) bed space needs cannot be quantified.

**Juvenile detention facilities.** According to the Department of Juvenile Justice, the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,286,103 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 of Public Safety's Committee on Inmate Forecasting in 2008.
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 2008.
3. Cost per prison bed was assumed to be \$27,294 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 FY2007 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.77 per day or \$10,509 per year. The local cost was calculated by using the daily expenditure cost of \$62.56 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 \$29.71 per day or \$10,853 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 offenders**

1. The number of offenders convicted for assaulting certain emergency room personnel was estimated based on the rate at which offenders have been convicted for committing a simple assault against law enforcement officers (LEOs) currently covered by § 18.2-57(C). While the current provision also covers firefighters, correctional officers, rescue squad personnel, DMV 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 to the State Police 2007 *Crime in Virginia* report, there were 18,081 total sworn officers in Virginia. Since there were 860 total convictions under § 18.2-57(C) during a recent two-year period, it was assumed that the number of law enforcement officers in 2007 resulted in approximately 409 convictions under § 18.2-57(C) that year  $[(860/2)*.95]$ . This is a rate of 2.2%  $[409/18,081]$ . Based on data supplied by the Virginia Hospital & Healthcare Association, the proposal would apply to approximately 4,900 to 7,800 emergency room workers in Virginia. The midpoint value from this range, 6,350 workers, was used for the purpose of estimation. If emergency room personnel are assaulted, and these assaults result in conviction, at the same rate as law enforcement officers, the proposal is expected to produce approximately 140 additional felony convictions a year by FY2015.

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2009, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases 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).
3. 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, 2007. For assaults, this rate was 11.2%.