



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1516 (Patron – Orrock)

LD#: 11101220

Date: 11/29/2010

Topic: Assault and battery of an ABC agent

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$32,029 (approximately 1 bed)
- **Local Adult Correctional Facilities:**
\$2,988 (less than one bed)
- **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 special agent of the Virginia Department of Alcoholic Beverage Control (ABC) subject to the same penalties that apply when the victim is a law enforcement officer, correctional 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 (§ 18.2-57(C)). The 2006 General Assembly extended these penalties to cover cases involving assault of a judge. In 2008, the General assembly added full-time sworn members of the enforcement division of the Department of Motor Vehicles and the 2009 General Assembly added Metropolitan Washington Airports Authority police officers to the definition of “law enforcement officer.”

In *Cline v. Commonwealth*, the Virginia Court of Appeals ruled that ABC agents are not expressly included in the definition of a law enforcement officer under § 18.2-57(E) and, therefore, the felony provision of § 18.2-57(C) cannot be applied in cases involving assaults of ABC agents (53 Va. App. 765, 675 S.E.2d 223 (2009)).

Currently, under § 18.2-57(A), simple assault or assault and battery of a person who is not a law enforcement officer, correctional officer, firefighter, emergency medical service provider, or judge is a Class 1 misdemeanor.

Analysis:

As of November 16, 2010, 115 ABC special agents throughout the state were vested with the authority of arrest for ABC violations as well as any other Virginia criminal law violation. According to the Department of Alcoholic Beverage Control, two assaults were committed against ABC agents in calendar year 2010 (through November 23).

According to the fiscal year (FY) 2009 and FY2010 Sentencing Guidelines database, 1,055 offenders were convicted of a felony for assault or assault and battery of a law enforcement officer, firefighter, correctional officer, medical service provider, or judge under § 18.2-57(C). In 856 of the cases, the assault was the primary, or most serious, offense. Of these, 63% of the offenders received a local-responsible (jail) sentence, with a median sentence length of 7.0 months. In addition, 1% of the offenders received probation or were sentenced to the time served by the offender while awaiting trial. For the 36% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years.

According to FY2009 and FY2010 General District Court Automated Information System (CAIS) data, when convicted of a misdemeanor assault (as the primary, or most serious offense), slightly less than half (48%) of offenders were given a jail term, with a median sentence length of one month. The remaining 52% were not given an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation increases the statutory penalty for an assault or assault and battery committed against an ABC special agent. If ABC agents are assaulted, and these assaults result in a felony conviction, at the same rate as other law enforcement officers, the proposal is expected to produce approximately two additional felony convictions a year by FY2017. 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 one bed by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$32,029.

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

FY12	FY13	FY14	FY15	FY16	FY17
0	1	1	1	1	1

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 less than one bed by FY2017 (state costs: \$2,988; local costs: \$4,737).

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 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 any impact is likely to be small.

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

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$32,029 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 2010.
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 2010.
3. Cost per prison bed was assumed to be \$27,065 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 FY2009 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.86 per day or \$10,541 per year. The local cost was calculated by using the daily expenditure cost of \$87.30 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 \$45.75 per day or \$16,712 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 an ABC agent as proposed was estimated based on the rate at which offenders have been convicted for committing a simple assault against a law enforcement officer currently covered by § 18.2-57(C). 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 2009 *Crime in Virginia* report, there were 18,383 total sworn officers in Virginia (excluding ABC agents) in CY2009. Since there were 856 felony convictions under § 18.2-57(C) during a recent two-year period, it was assumed that the number of assaults against law enforcement officers in CY2009 resulted in approximately 407 convictions under § 18.2-57(C) that year $[(856/2)*.95]$. This is a rate of 2.2% $[407/18,383]$. If ABC special agents are assaulted, and these assaults result in convictions, at the same rate as for law enforcement officers, the proposal is expected to produce approximately two additional felony convictions a year by FY2017. The estimate of two felony convictions a year is supported by information from the Department of Alcoholic Beverage Control, which reported two assaults committed against ABC agents during CY2010.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2011, 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, 2009. For assaults, this rate was 10.9%.

aslABC02_1220