



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 772

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

LD#: 11105298

Date: 2/11/2011

Topic: Assault and battery of fire marshals

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$12,818 (less than 1 bed)
- **Local Adult Correctional Facilities:**
\$1,196 (less than one bed)
- **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 amends § 18.2-57 to make assault or assault and battery of fire marshals who have police powers 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.”

Analysis:

According to the Virginia Fire Marshal Academy, as of December 16, 2009, 40 fire marshals throughout the state were vested with authority of arrest and other police powers (this figure excludes deputy fire marshals and assistant fire marshals). It is not known if some of the fire marshals identified above might fall under the current definition of firefighter and, therefore, be covered by the existing law. Under § 65.2-102, the definition of firefighter includes salaried firefighters, emergency medical technicians, lifesaving and rescue squad members, and arson investigators. Section 27-30 states that “fire marshal” may include the local arson investigator, when appointed to the position of fire marshal.

The number of assaults committed against fire marshals vested with police powers (excluding those covered by the existing provision) is unknown.

According to the fiscal year (FY) 2008 and FY2009 Sentencing Guidelines database, 1,166 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 933 of the cases, the assault was the primary, or most serious, offense. Of these, 61% of the offenders received a local-responsible (jail) sentence, with a median sentence length of 7.0 months. For the 38% of offenders who were given a state-responsible (prison) term, the median sentence was 1.5 years.

According to FY2007 and FY2008 General District Court Automated Information System (CAIS) data, when convicted of a misdemeanor assault (as the primary, or most serious offense), more than half (55%) of offenders were given a jail term, with a median sentence of one month. The remaining 45% 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 fire marshals vested with police powers. If these fire marshals are assaulted, and these assaults result in felony convictions, at the same rate as law enforcement officers, the proposal is expected to produce approximately one 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 less than one bed by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$12,818.

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: \$1,196; local costs: \$1,896).

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 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. 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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$12,818 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 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 fire marshals vested with police powers 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 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 $[(856/2) \cdot .95]$. This is a rate of 2.2% $[407/18,383]$. If fire marshals vested with police powers are assaulted, and these assaults result in convictions, at the same rate as for law enforcement officers, the proposal is expected to produce approximately one additional felony convictions a year by FY2017.

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%.

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