



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 953
Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Bell, R.B.)

LD#: 12104627

Date: 1/24/2012

Topic: Assault and battery of persons associated with the care of confined persons

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-57(C) to make assault or assault and battery of a person providing correctional services subject to the same penalties that apply when the victim is a law enforcement officer, firefighter, judge, etc. Pursuant to § 53.1-261, the term “correctional services” includes services relating to the operation of prison facilities, food services, commissary, medical services, transportation, educational programs, counseling services, and religious activities. The proposal also expands this provision to cover contractors providing services in juvenile correctional facilities and individuals directly involved in the care, treatment, or supervision of persons confined in a secure facility or juvenile detention home.

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 and 2009, the General assembly added full-time sworn members of the enforcement division of the Department of Motor Vehicles and Metropolitan Washington Airports Authority police officers. The 2011 General Assembly expanded the list of professionals covered under § 18.2-57(C) to include special agents of the Department of Alcoholic Beverage Control and fire marshals vested with police powers. Finally, the 2011 General Assembly specifically defined assault of an emergency health care provider as a Class 1 misdemeanor carrying a mandatory minimum sentence of two days.

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, etc., is a Class 1 misdemeanor. Section 18.2-55 makes it a Class 5 felony for a person to knowingly and willfully inflict bodily injury on an employee in a secure juvenile facility or juvenile detention home as defined in § 16.1-228 or in any facility designed for the secure detention of juveniles.

Analysis:

According to the fiscal year (FY) 2010 and FY2011 Sentencing Guidelines database, 1,029 offenders were convicted of a felony for assault or assault and battery of a law enforcement officer, correctional officer, firefighter, etc., under § 18.2-57(C) during the two-year period. In 834 of the cases, the assault was the primary, or most serious, offense. Of these, nearly two-thirds (64%) of the offenders received a local-responsible (jail) sentence, with a median sentence length of 7.0 months. In addition, 2% of the offenders received probation or were sentenced to the time served by the offender while awaiting trial. For the 34% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years.

According to the Department of Corrections (DOC), as of January 4, 2012, there are 9,461 DOC employees who have direct contact with inmates. Of the total, 7,080 are correctional officers as defined in § 53.1-1; the remainder (roughly 2,400) are other DOC employees who interact with inmates. The DOC reports that there were 46 inmate-on-staff assaults in FY2010 and FY2011 that were referred by DOC's Inspector General for prosecution. According to the DOC, there are approximately 3,250 volunteers and 901 persons in contract positions who have direct contact with inmates. Contract positions include staff of the Lawrenceville prison and persons contracted to provide medical, food, and commissary services.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An "intake" occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The DJJ reports an average of 16 intake petitions per year for the three most recent fiscal years (FY2009 to FY2011) for a violation of § 18.2-55 by a person under the age of 18. The DJJ reports an average of four commitments per year to juvenile correctional centers during this time period for § 18.2-55 violations.

According to the DJJ, as of December 28, 2011, there are approximately 655 security staff in the juvenile correctional centers who have direct contact with the juveniles committed to those facilities. Security staff include Juvenile Correctional Officers, Juvenile Correctional Officer Seniors, Corrections Sergeants, Corrections Lieutenants, Corrections Captains, Corrections Majors, Assistant Superintendents, and the Superintendents of each facility. There are 233 non-security staff who may have direct contact with the juveniles committed to those facilities and be afforded the protections in the proposed legislation. Non-security staff include staff who provide medical, psychological, dental, food, commissary services, and maintenance services.

The DJJ indicates that, as of December 28, 2010, there are approximately 300 persons in contract positions within juvenile correctional centers who may be afforded the protections in the proposed legislation. Contract positions include staff who provide medical, psychological, dental, food, and commissary services, with some additional personnel under contract to provide maintenance services. According to the DJJ, there were 96 juvenile-on-staff assaults in FY2010 and 97 juvenile-on-staff assaults in FY2011 that could be subject to the provisions in the proposed legislation.

The proposed amendments would also cover staff in local juvenile detention facilities. There are 24 secure detention facilities throughout the state. Twelve of these facilities are locally operated and twelve are run by commissions (political entities comprised of three or more localities). According to DJJ's "Juvenile Correctional Center Utilization Report" for fiscal year 2010, there were approximately 1,290 full-time staffing positions in the detention facilities in FY2010.¹ Some positions may not be

¹ See Juvenile Correctional Center Utilization Report, October 1, 2011, submitted in response to Chapter 890 of the 2011 Virginia Acts of Assembly (The Appropriation Act, Item 400 (D.) (2011)).

filled. All detention centers have a mental health clinician position, which is funded by the Department of Behavioral Health and Developmental Services and provided by the local Community Services Board. Many detention centers rely on part-time staff to support the direct supervision of detained residents, but some may not have noted the number of part-time staff in the DJJ report. The number of contractors who are employed by local juvenile detention facilities is not known. Many of the positions listed above would be afforded the protections proposed in this legislation.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of a felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The rate at which individuals providing correctional services and others having direct contact with inmates are assaulted is not known. Since existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Because it is specific to individuals providing services in prisons and juvenile facilities, the proposal is not expected to have an impact on local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for offenders affected by the proposal, as they will most likely be staying in prison longer prior to being released to the community.

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. It is possible that a juvenile placed in a juvenile correctional center could be subject to the proposed amendments to § 18.2-57 of the *Code*. The mandatory minimum sentence would not apply to an adjudication in juvenile and domestic relations district court. However, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for an additional commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code*. As such, the length of stay for a juvenile may increase. Therefore, according to the Department of Juvenile Justice, the legislative proposal may have an impact on juvenile correctional center bed space needs. However, the magnitude of the impact on juvenile correctional center bed space needs cannot be estimated.

Juvenile detention facilities. It is possible that a person under the age of 18 who is detained in a juvenile detention facility would be subject to the proposed Class 6 felony assault and battery provisions in § 18.2-57. In such an event, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for post-dispositional detention under § 16.1-284.1. Although the legislative proposal may have an impact on the bed space needs of juvenile detention facilities, the magnitude of the impact cannot be estimated.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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