



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1067
Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Deeds)

LD#: 17104296

Date: 1/17/2017

Topic: Assault and battery of certain officers

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined**
- **Juvenile Detention Facilities:**
Cannot be determined**

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the 2016 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 to make assault or assault and battery of private police officers employed by a private police department (as defined in § 9.1-101), police agents (§ 56-353), and conservators of the peace (§ 56-354) subject to the same penalties that apply when the victim is a law enforcement officer, correctional officer, firefighter, emergency medical services provider, magistrate, or judge. Currently, there are 17 private police departments in Virginia.¹ According to the Department of Criminal Justice Services, another 17 individuals meet the definition of police agents in § 56-353. The number of individuals who are conservators of the peace as defined in § 56-354 is unknown. The number of private police officers, police agents, and conservators of the peace who are not currently defined as “law enforcement officers” in § 18.2-57(C) is unknown.

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.” The 2011 General Assembly expanded the definition of law enforcement officer to include fire marshals who have been granted police powers and special agents of the Department of

¹ According to the Department of Criminal Justice Services, there are 17 private police departments in the Commonwealth, but only seven are recognized by statute. Private police departments in Virginia that are not recognized by statute are: Aquia Harbour Police Department, Babcock & Wilcox Police Department, Bridgewater Airpark Police Department, Carilion Clinic Police Department, Kings Dominion Police Department, Kingsmill Police Department, Lake Monticello Police Department, Lynchburg Regional Airport Police Department, Massanutten Police Department, and Wintergreen Police Department. The number of officers is unknown.

Alcoholic Beverage Control. In 2013, the penalty enhancement was expanded to cover assaults of magistrates, certain employees of local and regional jails, and any individual directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or sexually violent predators in the custody of the Department of Behavioral Health and Developmental Services. In 2016, the General Assembly expanded the statute to include any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10.

In *South v. Commonwealth*, the Virginia Court of Appeals ruled that the felony penalty defined in § 18.2-57(C) applies only if the victim fits within one of the listed categories or if he is an employee of a police department or sheriff's office administered by the Commonwealth or local government (47 Va. App. 247, 623 S.E.2d 419 (2005)). In a subsequent unpublished opinion (*Guinyard v. Commonwealth*), the Appeals Court held that the definition of law enforcement officer under § 18.2-57(E) (now subsection F) is limited to categories of law enforcement officers that are explicitly enumerated in the subsection (07 Vap UNP 1185061 (2007)).

Analysis:

According to the fiscal year (FY) 2015 and FY2016 Sentencing Guidelines database, 964 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 762 of the cases, the assault was the primary, or most serious, offense. Of those, nearly two-thirds (60.0%) received a local-responsible (jail) term with a median sentence length of seven months. For the 37.9% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 2.1% were sentenced to the time served by the offender while awaiting trial.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of additional felony convictions that would result from enactment of the proposal. As a result, the magnitude of the impact on prison bed space needs cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the 2016 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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