



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 818

(Patron – Hope)

LD#: 20100623

Date: 11/18/2019

Topic: Assault and battery of certain officers

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$160,177 (4 beds)
- **Local Adult Correctional Facilities:**
\$21,623 (2 beds)
- **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

Summary of Proposed Legislation:

The proposal amends § 18.2-57 to make assault or assault and battery of animal control officers and deputy animal control officers 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. Under § 18.2-57, any person who commits simple assault or assault and battery is guilty of a Class 1 misdemeanor. The penalty is increased to a Class 6 felony (with a six-month mandatory minimum sentence) if the victim is a law enforcement officer, correctional officer, firefighter, emergency medical services provider, magistrate, judge or other designated professional.

Assault of a law enforcement officer has been a Class 6 felony with a six-month mandatory minimum sentence since July 1, 1997. Since 2006, the General Assembly has extended this Class 6 felony to cover assaults committed against other individuals, including judges, full-time sworn members of the enforcement division of the Department of Motor Vehicles, fire marshals who have been granted police powers, special agents of the Department of Alcoholic Beverage Control, 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. Under § 18.2-57, battery of a teacher is a Class 1 misdemeanor requiring a two-day mandatory minimum term of confinement or, if committed using a weapon prohibited on school property, a mandatory minimum term of six months. Battery of a health care provider is also a Class 1 misdemeanor requiring a minimum of two days confinement.

According to the Virginia Animal Control Association, approximately half of its 470 members are sworn officers; these individuals are likely covered by the current provisions of § 18.2-57(C). The remaining animal control officers (approximately 235) are not sworn officers and would be added to the individuals covered by § 18.2-57(C) if the proposal is enacted. The number of assaults committed against these individuals within the Commonwealth is unknown.

Analysis:

According to fiscal year (FY) 2018 and FY2019 Sentencing Guidelines data, 1,145 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 906 of the cases, a completed assault was the primary, or most serious, offense. More than half of the offenders (56.3%) received a local-responsible (jail) sentence for which the median sentence was seven months. For the 41.4% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 2.3% were sentenced to the time served by the offender while awaiting trial.

General District Court CMS data for FY2018 and FY2019 indicate that 6,443 offenders were convicted of a misdemeanor under § 18.2-57(A) for committing simple assault or assault & battery. Of these offenders, 50.8% were sentenced to probation without an active term of incarceration and 49.2% received a local-responsible (jail) term with a median sentence of 1.3 months.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony offense, the proposal is expected to have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible bed space needs is estimated to be **4 beds by FY2026**. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$160,177.

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

FY21	FY22	FY23	FY24	FY25	FY26
2	4	4	4	4	4

Local adult correctional facilities. The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be **2 beds by FY2026** (state costs: \$21,623; local costs: \$32,553).

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for state and local community corrections resources. The *Code of Virginia* 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 impacts on both local and state community corrections resources that may result from the proposal.

Virginia's sentencing guidelines. The sentencing guidelines cover felony 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 is \$160,177 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 2019.
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 2019.
3. Cost per prison bed was assumed to be \$36,315 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 FY2018 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$34.07 per day or \$12,444 per year. The local cost was calculated by using the daily expenditure cost of \$88.14 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 \$51.29 per day or \$18,734 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 animal control officers 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 2018 *Crime in Virginia* report, there were 19,258 total sworn officers in Virginia. Since there were 1,145 total convictions under § 18.2-57(C) during a recent two-year period, it was assumed that the number of law enforcement officers in 2018 resulted in approximately 544 convictions under § 18.2-57(C) that year $[(1145/2) \times .95]$. This is a rate of 2.8% $[544/19,258]$. Based on an estimate supplied by the Virginia Animal Control Association, the proposal would apply to approximately 235 animal control officers in Virginia. If non-sworn animal control officers are assaulted, and these assaults result in conviction, at the same rate as law enforcement officers, the proposal is expected to produce approximately 6.6 additional felony convictions a year by FY2026.

Assumptions relating to sentencing and time served

2. The impact of the proposed legislation, which would be effective on July 1, 2020, is phased in to account for case processing time.
3. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted of a Class 6 felony under § 18.2-57 (C).
4. 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, 2018. For assault crimes, this rate was 8.25%.