



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2075 (Patron – Armstrong)

LD#: 07-8184216

Date: 12/13/2006

Topic: Assault and battery of an ABC agent

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$56,971 (2 beds)
- **Local Adult Correctional Facilities:**
\$17,153 (2 beds)
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **Juvenile Correctional Centers:**
None
- **Juvenile Detention Facilities:**
None

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, 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; the 2006 General Assembly extended these penalties to cover cases involving assault of a judge. Currently, under § 18.2-57(A), simple assault or assault and battery of a person who is not a law enforcement officer, firefighter, emergency medical service provider, or judge is a Class 1 misdemeanor.

Analysis:

As of October 31, 2005, 132 ABC special agents throughout the state were vested with authority of arrest for ABC violations as well as any other Virginia criminal law violation. The number of assaults committed against these agents in recent years is unknown.

According to fiscal year (FY) 2005 and FY2006 Sentencing Guidelines data, 781 offenders were convicted of a felony for an assault and battery of a law enforcement officer, firefighter or medical service provider under § 18.2-57(C). These offenses were completed crimes and, in each case, the assault was the primary, or most serious, offense in a sentencing event. Most offenders (62%) received a local-responsible (jail) sentence. Approximately 36% were given a state-responsible (prison) term; for offenders committed to prison, the median sentence was 1.5 years.

According to the Local Inmate Data System (LIDS), which contains information on all persons held in local and regional jails in Virginia, 6,258 persons were convicted during calendar year (CY) 2004 and CY2005 of a Class 1 misdemeanor assault or assault and battery under § 18.2-57(A). Most of the offenders held pre- or post-trial in jail received an active term of incarceration for the offense. The median jail sentence was approximately two months.

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 three additional felony convictions a year under § 18.2-57(C). 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 two beds by FY2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$56,971.

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

FY08	FY09	FY10	FY11	FY12	FY13
0	1	2	2	2	2

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 two beds by FY2013 (state costs: \$17,153; local costs: \$15,860).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY08	FY09	FY10	FY11	FY12	FY13
1	1	2	2	2	2

Adult community corrections resources. Because the proposal may result in additional felony offenders placed on community supervision (or lengthier supervision periods for offenders already in the community), it may have an impact on community corrections resources. The potential impact on adult community corrections cannot be determined, but is likely to small.

Virginia's sentencing guidelines. Felony convictions under § 18.2-57 are covered by the sentencing guidelines. No adjustment to the guidelines is necessary under the proposal.

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

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$56,971 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's Committee on Inmate Forecasting in 2006.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2006.

3. Cost per prison bed was assumed to be \$25,709 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 FY2005 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.37 per day or \$10,362 per year. The local cost was calculated by using the daily expenditure cost of \$59.24 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 \$26.23 per day or \$9,581 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 law enforcement officers currently covered by § 18.2-57(C). While the current provision also covers firefighters, emergency rescue personnel, correctional 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 the State Police 2005 *Crime in Virginia* report, there were 17,201 total sworn officers in Virginia other than ABC agents. Since there were 781 total convictions under § 18.2-57(C) during a recent two-year period, it was assumed that the number of law enforcement officers in 2005 resulted in approximately 371 convictions under § 18.2-57(C) that year $[(781/2)*.95]$. This is rate of 2.2% $[371/17,201]$. If ABC agents are assaulted, and these assaults result in conviction, at the same rate as other law enforcement officers, the proposal is expected to produce approximately three additional felony convictions a year.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2007, is phased in to account for case processing time.
2. 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, 2005. For assaults, this rate was 10.96%.
3. To gauge the impact of proposed penalty structure, it was assumed that the distribution of sentences under the proposal 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).

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