



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 504

(Patron – Stuart)

LD#: 08-8729333

Date: 1/8/2008

Topic: Assault and battery

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$6,044,862 (220 beds)
- **Local Adult Correctional Facilities:**
-\$488,437 (-47 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends § 18.2-57 to make assault or assault and battery of a magistrate, Commonwealth's attorney, witness in a criminal case or juror subject to the same penalties that apply when the victim is a law enforcement officer, firefighter, emergency medical service provider or judge. In addition, the proposal would increase the penalty for assault or assault and battery of any of these individuals from a Class 6 to a Class 4 felony. The existing mandatory minimum sentence of six months would remain unchanged.

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.

Unlawful injury of a law enforcement officer, firefighter, or emergency medical service provider, under § 18.2-51.1, is currently a Class 6 felony requiring a mandatory minimum term of one year.

Analysis:

According to fiscal year (FY) 2006 and FY2007 Sentencing Guidelines data, 763 offenders were convicted of a felony under § 18.2-57(C) for an assault or an assault and battery of a law enforcement officer, firefighter, medical service provider or judge. These offenses were completed crimes and, in each case, the assault was the primary, or most serious, offense in a sentencing event. Most offenders (63%) 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. Three offenders were sentenced to the statutory maximum of five years.

According to the Local Inmate Data System (LIDS), which contains information on all persons held in local and regional jails in Virginia, 6,102 persons were convicted during calendar year (CY) 2005 and

CY2006 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 proposal is expected to increase the need for state-responsible (prison) beds in two ways. First, by expanding § 18.2-57(C) to include assaults of magistrates, prosecutors, witnesses and jurors, the number of felony convictions is likely to increase. Because current misdemeanor data do not provide any detail on crime victims, the number of assaults involving magistrates, prosecutors, witnesses and jurors is not known. Therefore, the impact of this aspect of the proposal cannot be quantified. Second, by increasing the penalty for the existing crime from a Class 6 to a Class 4 felony, the proposal could result in longer prison terms for some offenders. The impact of this aspect of the proposal can be estimated. Assuming that judges will, in the future, sentence these offenders to terms similar to those for offenders currently convicted of Class 4 felonies, the impact is projected to be 220 beds by FY2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$6,044,862.

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

FY09	FY10	FY11	FY12	FY13	FY14
30	102	151	182	204	220

The proposed Class 4 felony penalty for simple assault exceeds the existing penalty for unlawful injury of a law enforcement officer, firefighter, etc., under § 18.2-51.1, currently a Class 6 felony.

Local adult correctional facilities. The proposal is expected to have two types of impacts on local-responsible (jail) bed space needs. Expanding the applicability of the existing crime is expected to increase the need for local-responsible (jail) beds; however, the size of this impact cannot be quantified. Increasing the felony penalty for this crime would likely result in a shift of some offenders from jail to prison, because some offenders currently receiving a jail sentence would instead receive a prison term under the higher felony penalty in the proposal. This impact is estimated to be a reduction of 47 jail beds by FY2014 (state costs: \$488,437; local costs: \$489,942). Although the two impacts are in opposite directions, the larger impact is expected to be a reduction in the need for jail beds.

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

FY09	FY10	FY11	FY12	FY13	FY14
-25	-42	-44	-46	-47	-47

Adult community corrections resources. The impact of the proposal on community corrections resources cannot be determined. The proposal may result in additional felony offenders placed on community supervision. The proposal could also delay the need for services for some felony offenders, as they will be serving longer incarceration terms than those currently served by offenders convicted of this crime. However, it is likely that the proposal would also result in longer periods of suspended time for some offenders, who may then have longer periods of community supervision of satisfy.

Virginia's sentencing guidelines. Felony convictions under § 18.2-57(C) 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. Increasing the penalty for the existing crime from a Class 6 to a Class 4 felony does not affect the Length-of-Stay (LOS) guidelines used by the Department.

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 at least \$6,044,862 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 of Public Safety's Committee on Inmate Forecasting in 2007.
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 July 2007.
3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.* Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.
5. The impact of the proposed legislation, which would be effective on July 1, 2008, is phased in to account for case processing time.

Assumptions relating to sentence lengths

1. 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, 2006. For assaults, this rate was 11.2%.
2. 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 for existing Class 4 felonies defined in the *Code of Virginia*.
3. For comparison purposes, a similar analysis was conducted in which it was assumed that the distribution of sentences under the proposal will be similar to the distribution of sentences for the existing Class 6 felony for unlawful wounding of a law-enforcement officer (§ 18.2-51.1). Under this assumption, the impact was estimated to be 303 beds by FY2014 (\$8,311,019).

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