



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2393 (Patron – Bell)

LD#: 09-0415432

Date: 1/12/2009

Topic: Assault and battery of animal control officers

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$151,875 (6 beds)
- **Local Adult Correctional Facilities:**
\$46,783 (4 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends § 18.2-57 to make assault or assault and battery of an animal control officer subject to the same penalties that apply when the victim is a law enforcement officer (LEO), correctional officer, firefighter, emergency medical service provider, Department of Motor Vehicles officer, or judge. Assault of a law enforcement officer or other specified official is a Class 6 felony and carries a mandatory minimum penalty of six months. Currently, assault or assault and battery of a person who is not a law enforcement officer or other official specified in the statute is a Class 1 misdemeanor and does not require a mandatory minimum sentence.

The proposal also expands § 18.2-51.1, related to malicious and non-malicious wounding of law enforcement officers, to include animal control officers. This would raise the penalty for malicious wounding of an animal control officer from a Class 3 felony to a felony punishable by 5 to 30 years that requires a mandatory minimum sentence of 2 years in prison. For unlawful wounding of an animal control officer, a mandatory minimum sentence of one year would be required under the proposal.

Finally, the proposal expands the crime of obstruction of justice under § 18.2-460 to add animal control officers to the list of officials whom one may not impede or obstruct during the performance of their duties.

Since 1999, the General Assembly has expanded § 18.2-57 to cover assaults on correctional officers, Department of Corrections employees involved in the care or supervision of inmates, volunteer firefighters and rescue squad members, judges, and full-time sworn members of the Department of Motor Vehicles enforcement division. Similarly, since 2002, § 18.2-51.1 has been expanded to include emergency medical services personnel, search and rescue personnel, game wardens, and conservation police officers. Section 18.2-460 (obstruction of justice) was revised in 2007 to include Commonwealth's attorneys.

Analysis:

As of December 15, 2008, the Office of Veterinary Services estimates that there are approximately 400 animal control officers employed by localities across Virginia. The number of assaults, malicious and non-malicious injuries, and obstruction of justice offenses committed against animal control officers is unknown.

The following table summarizes felony sentencing information for §§ 18.2-51.1, 18.2-57(C), and 18.2-460(C), according to fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data.

FY2006 and FY2007 Felony Sentencing Information

Most Serious Offense:	Total Cases	Type of Disposition				
		No Active Incarceration	Local-Responsible (Jail)		State-Responsible (Prison)	
		% of Cases	% of Cases	Median Sentence	% of Cases	Median Sentence
Malicious wounding of law enforcement officer, etc. (§ 18.2-51.1)	36	8%	3%	6 months	89%	4 years
Unlawful wounding of law enforcement officer, etc. (§ 18.2-51.1)	22	22.5%	22.5%	6 months	55%	2 years
Simple assault on law enforcement officer, etc. (§ 18.2-57(C))	860	4%	56%	7 months	40%	1.5 years
Felony obstruction of justice by threats or force (§ 18.2-460(C))	46	13%	37%	6 months	50%	1.8 years

Note: The median sentence is the middle value, above and below which lie an equal number of cases. Data are based on the primary (most serious) offense at sentencing.

Data Source: FY2006 and FY2007 Pre/Post-Sentence Investigation (PSI) database

The table below summarizes misdemeanor sentencing information for §§ 18.2-57(A) and 18.2-460(A, B), according to calendar year (CY) 2006 and CY2007 General District Court Automated Information System (CAIS) data.

CY2006 and CY2007 Misdemeanor Sentencing Information

Misdemeanor Offense:	Total Cases	Type of Disposition				
		No Active Incarceration	Local-Responsible (Jail)		State-Responsible (Prison)	
		% of Cases	% of Cases	Median Sentence	% of Cases	Median Sentence
Simple assault and battery (§ 18.2-57(A))	10,214	52%	48%	1 month	0%	n/a
Misdemeanor obstruction of justice (§ 18.2-460(A,B))	6,965	54%	46%	1 month	0%	n/a

Note: The median sentence is the middle value, above and below which lie an equal number of cases. Data are based on the primary (most serious) offense at sentencing.

Data Source: CY2006 and CY2007 General District Court Automated Information System (CAIS) database

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands existing felony assault provisions related to law enforcement officers to include animal control officers and makes it unlawful to obstruct or impede animal control officers engaged in their official duties. If the above crimes are committed against animal control officers at the same rate as law enforcement officers, the proposal is expected to produce approximately 10 additional felony convictions a year by FY2015. Because a large portion of these offenders will receive a state-responsible (prison) sentence, the proposal will increase future bed space needs. The impact on state-responsible (prison) beds is estimated to be six beds by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$151,875.

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

FY10	FY11	FY12	FY13	FY14	FY15
2	4	5	5	5	6

Local adult correctional facilities. The proposal will also increase the need for local-responsible (jail) beds. Making it unlawful to obstruct or impede animal control officers is expected to produce 77 additional misdemeanor convictions a year by FY2015. The impact on local-responsible (jail) beds is estimated to be four beds by FY2015 (state costs: \$46,783; local costs: \$48,314).

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

FY10	FY11	FY12	FY13	FY14	FY15
4	4	4	4	4	4

Adult community corrections programs. Expanding misdemeanor and felony provisions as proposed will increase the overall demand for adult community corrections services; however, the net impact of these changes on local and state resources cannot be quantified.

Virginia's sentencing guidelines. The sentencing guidelines cover felony violations of §§ 18.2-57(C) and 18.2-51.1. Convictions under § 18.2-460 are not covered by the guidelines as the primary (most serious) offense in a case; however, a conviction under this section may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. Because the proposal expands existing felony and misdemeanor provisions and increases the penalty for certain acts from a misdemeanor to a felony, the proposal could result in additional commitments to the Department of Juvenile Justice (DJJ). Existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication or has accumulated a total of four Class 1 misdemeanor adjudications. The number of additional juveniles who may be committed cannot be determined; therefore, the impact of the proposal on Juvenile Correctional Center (JCC) bed space needs cannot be quantified.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal 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 \$151,875 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 2008.
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 2008.
3. Cost per prison bed was assumed to be \$27,294 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 FY2007 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.77 per day or \$10,509 per year. The local cost was calculated by using the daily expenditure cost of \$62.56 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 \$29.71 per day or \$10,853 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 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, emergency rescue personnel, correctional officers, 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 2007 *Crime in Virginia* report, there were 18,081 total sworn officers in Virginia. Since there were 860 convictions under § 18.2-57(C) during a recent two-year period, it was assumed that the number of law enforcement officers in 2007 resulted in approximately 409 convictions under § 18.2-57(C) that year $[(860/2)*.95]$. This is a rate of 2.2% $[409/18,081]$. If 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 9.0 additional felony convictions a year by FY2015 for assault and battery of animal control officers. Similar ratios were developed for unlawful injury and malicious injury of animal control officers (resulting in an estimated .2 and .4 additional felony convictions annually by FY2015, respectively) and felony and misdemeanor obstruction of justice (resulting in an estimated .5 felony and 77.0 misdemeanor convictions each year by FY2015, respectively).

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2009, is phased in to account for case processing time.
2. To gauge the impact on sentencing associated with increasing misdemeanor assault to a felony, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing felony provision for assault and battery of a law enforcement officer under § 18.2-57(C). To gauge the impact on sentencing associated with malicious and non-malicious wounding (§ 18.2-51.1), it was assumed that any sentence less than the mandatory minimum required by the proposal would, in the future, be increased to equal to the specified mandatory minimum. For non-malicious wounding of a law-enforcement officer, the mandatory minimum sentence is one year; for malicious wounding of a law-enforcement officer, the mandatory minimum is two years.
3. To gauge the impact associated with the expansion of misdemeanor and felony obstruction of justice provisions, the sentences for any additional offenders convicted under § 18.2-460 are assumed to have a similar distribution to those currently sentenced for these offenses.
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, 2007. For assaults, this rate was 11.2% (used for assaults); for person crimes, this rate was 10.7% (used for obstruction of justice).

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