



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2492 **(Patron – Miller, P.J.)**

LD#: 09-8726644

Date: 1/13/2009

Topic: Assault and battery of Metropolitan Washington Airports Authority police officers

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$13,810 (.5 bed)
- **Local Adult Correctional Facilities:**
Negligible
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

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

Summary of Proposed Legislation:

The proposal amends § 18.2-57, relating to assault and battery, to clarify that police officers of the Metropolitan Washington Airports Authority (MWAA) are considered law enforcement officers for the purposes of this statute.

The MWAA was established under Chapter 598 of the 1985 Acts of Assembly and was organized pursuant to an interstate compact with the goal of operating and improving the two primary airports serving the metropolitan Washington area. Section 5.1-158 allows the MWAA to “establish and maintain a regular police force and to confer police powers to be exercised with respect to offenses occurring on the Authority Facilities.” Under § 5.1-158, these officers are granted all powers vested in police officers under Chapter 17 of Title 15.2, Chapter 11 of Title 16.1, Title 18.2, Title 19.2, and Title 46.2 of the *Code*, and are responsible for enforcing the laws of the Commonwealth and all other applicable ordinances, rules, and regulations.

In § 18.2-57, which delineates punishment for assault and battery, a law enforcement officer is defined, in part, as an employee of a police department or sheriff's office that is part of or administered by the Commonwealth, or any political subdivision thereof, who is responsible for the prevention or detection of crime and enforcing laws of the Commonwealth. Since 1999, the General Assembly has expanded this statute to cover corrections officers, game wardens, jail officers in local and regional facilities, all deputy sheriffs, volunteer firefighters and rescue squad members, judges, and full-time sworn members of the Department of Motor Vehicles enforcement division.

Since July 1, 1997, assault of a law enforcement officer, firefighter, etc., has been a Class 6 felony with a six-month mandatory minimum term of confinement. Under § 18.2-57(A), simple 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 term of confinement.

Analysis:

According to the Metropolitan Washington Airports Authority, as of December 19, 2008, there were 194 police officers employed by the Authority, although a total of 211 officers have been authorized. The Authority reports that, since August 2006, two assaults against MWAA police officers have been prosecuted. According to the MWAA, since MWAA police officers were not specifically identified as law enforcement officers in § 18.2-57, these two cases resulted in plea agreements to misdemeanor assault. One of these offenders was convicted of two counts of assaulting an MWAA officer and received a sentence of 20 days on each, to be served concurrently. If convicted under the felony provision for assaulting a law enforcement officer, as proposed, the court would be required to give this offender a six-month mandatory minimum sentence on each count which, when added together, would result in a one-year sentence. In the second case cited above, the offender was not given an active term to serve.

Both of the recent cases described above resulted in misdemeanor convictions due to uncertainty regarding the definition of law enforcement officer in § 18.2-57. The General Assembly, since 1999, has gradually expanded the types of officers and officials covered by this provision by explicitly adding them to the statute. Because so many types of officers are now explicitly listed in § 18.2-57, and MWAA officers are not, uncertainty has resulted as to whether MWAA officers are covered. Information provided by MWAA revealed a 2002 case in which the defendant was successfully charged and convicted of the felony for assaulting an MWAA officer and that offender was sentenced to the mandatory minimum six-months in jail.

The proposal could have a very small fiscal impact, as these cases could now, without uncertainty, be treated as felonies instead of misdemeanors.

According to the fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) database, 1,108 offenders were convicted of a felony for assault or assault and battery of a law enforcement officer, firefighter, correctional officer, medical service provider, or judge, etc., under § 18.2-57(C). In 860 of the cases, the assault was the primary, or most serious, offense. Of these, 56% of the offenders received a local-responsible (jail) sentence with a median sentence of 7 months. For the 40% of offenders who were given a state-responsible (prison) term, the median sentence was 1.5 years.

According to calendar year (CY) 2006 and CY2007 General District Court Automated Information System (CAIS) data, there were 10,214 offenders convicted of misdemeanor assault and battery. Nearly half (48%) were sentenced to jail with a median term of one month. The remaining 52% were not given an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation clarifies the applicable statutory penalty for assault or assault and battery committed against a MWAA officer (see *Analysis* section above). The proposal could have a very small fiscal impact, as these cases could now, without uncertainty, be treated as felonies instead of misdemeanors. If these officers are assaulted at the same rate as they have been over the last three years (as reported by the MWAA) and these result in felony convictions, the proposal is expected to produce approximately one additional felony conviction a year by FY2015. According to historical data, 40% of offenders convicted of a felony for assaulting a law enforcement officer are given a state-responsible (prison) sentence. If offenders who assault MWAA officers are sentenced similarly to offenders who have assaulted law enforcement officers already covered by § 18.2-57, the proposal would have a small impact on state-responsible (prison) beds. The impact is estimated to be less than one bed (approximately .5 bed) by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$13,810.

Local adult correctional facilities. While the proposal may increase local-responsible (jail) bed space needs, the size of the impact is expected to be negligible.

Adult community corrections programs. Clarifying that a crime should be treated as a Class 6 felony instead of a Class 1 misdemeanor may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, 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 impact on local or state community corrections resources that may result from the proposal, but any impact is likely to be small.

Virginia's sentencing guidelines. The sentencing guidelines cover violations of § 18.2-57(C) that are processed in circuit court. No adjustment to the guidelines would be necessary under the proposal.

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

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$13,810 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 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 who may be convicted of an assault and battery of MWAA police officers was based on information provided by the MWAA that in a recent three-year span, two officers were assaulted and the offenders convicted under the misdemeanor provisions of § 18.2-57. If MWAA officers are assaulted, and these assaults result in conviction, at the same rate historically reported, the proposal is expected to produce approximately .67 additional felony convictions for simple assault of a law-enforcement officer a year by FY2015. 1. Similar ratios were developed for unlawful injury and malicious injury of law-enforcement officers (.13 and .09 additional convictions by FY2015, respectively, for which a mandatory minimum sentence would be required).

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, it was assumed that the distribution of sentences for the affected cases 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).

3. 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%.

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