



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2633 (Patron – Cline)

LD#: 09-8813464

Date: 1/20/2009

Topic: Assault and battery of a campus police officer

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$16,633 (.6 bed)
- **Local Adult Correctional Facilities:**
At least \$1,649 (.2 bed)
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **Juvenile Correctional Centers:**
Cannot be determined, likely to be small
- **Juvenile Detention Facilities:**
Cannot be determined, likely to be small

Summary of Proposed Legislation:

The proposal amends § 18.2-57 to make assault or assault and battery of a campus police officer subject to the same penalties that apply when the victim is a law enforcement officer, correctional officer, firefighter, emergency medical service provider, or judge. Under § 18.2-57(E), a law enforcement officer is defined as “any full-time or part-time employee of a police department or sheriff’s office which is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth.” The definition of law enforcement officer also includes conservation officers, full-time sworn members of the enforcement division of the Department of Motor Vehicles, jail officers in local and regional correctional facilities, deputy sheriffs, and auxiliary police officers.

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. Under § 18.2-57(A), simple assault or assault and battery of a person who is not a law enforcement officer, correctional officer, firefighter, emergency medical service provider, or judge is a Class 1 misdemeanor.

The General Assembly has expanded § 18.2-57 numerous times over the past several years. The 1999 General Assembly revised § 18.2-57(C) to cover assaults on correctional officers or DOC employees involved in the care or supervision of inmates in the custody of the Department. In 2004, the General Assembly added volunteer firefighters and rescue squad members. The 2006 and 2008 General Assemblies extended the enhanced penalties to cover cases involving assault of a judge and assault of a full-time sworn member of the Department of Motor Vehicles enforcement division, respectively.

Analysis:

The 2007 *Crime in Virginia* report, produced by the State Police, indicates that there were 533 sworn officers associated with the 23 college and university police departments that contributed to the report. Of these, 485 officers were associated with public institutions of higher education, while 48 were

associated with privately owned schools. The number of assaults committed against these officers is unknown.

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 increases the statutory penalty for an assault or assault and battery committed against a campus police officer. If officers employed by public colleges and universities are not already covered by the existing statute, the proposal extends the provisions of § 18.2-57(C) to cover campus police officers from both public and private institutions. If these officers are assaulted, and these assaults result in felony convictions, at the same rate as law enforcement officers, the proposal is expected to produce 12 additional felony convictions a year by FY2015. In this scenario, the estimated amount of the necessary appropriation would be \$184,868. However, if officers at public universities are currently covered by the existing statute, the proposal only extends the provisions of § 18.2-57(C) to officers working at private universities, and the impact of the proposal would be less. Based on this scenario, the impact is estimated to be less than one bed by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$16,633.

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 an average of less than one bed by FY2015 (state costs: \$1,649; local costs: \$1,703).

Adult community corrections programs. Raising a crime from a Class 1 misdemeanor to a Class 6 felony 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 Virginia's circuit courts. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal may increase juvenile correctional center bed space needs. As most college students are 18 or older, the impact is expected to be small.

Juvenile detention facilities. Similarly, the Department of Juvenile Justice reports that the proposal may increase the bed space needs of juvenile detention facilities, but the impact is expected to be small.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$16,633 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 campus police 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 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 total 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% $[409/18,081]$. The number of sworn officers employed by colleges and universities was taken from the State Police's 2007 *Crime in Virginia* report. If campus police officers are assaulted, and these assaults result in conviction, at the same rate as other law enforcement officers, the proposal is expected to produce approximately one additional felony conviction a year by FY2015.
2. The impact reported for the purposes of § 30-19.1:4 presumes that campus police officers employed by public colleges and universities are already covered under the provisions of § 18.2-57(C).

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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