



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 216 **(Patron – McClellan)**

LD#: 10100379

Date: 12/4/2009

Topic: Assault and battery against individual covered by protective order

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$542,002 (20 beds)
- **Local Adult Correctional Facilities:**
-\$88,989 (-8 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal expands § 18.2-57.2, relating to assault and battery of a family or household member, to include assault and battery of a person who is covered by a protective order issued against the assailant. Assault and battery committed under these circumstances is already a Class 1 misdemeanor under § 18.2-57; however, adding it to § 18.2-57.2 means that the penalty for a third or subsequent conviction for this offense (or a combination of this offense and assault of a family or household member) would be punishable as a Class 6 felony.

Analysis:

According to the CY2007 and CY2008 Local Inmate Data System (LIDS), there were 160 offenders charged with both the violation of a protective order and an assault (excluding assault of a family or household member under the existing § 18.2-57.2(A)) committed on the same date who were convicted of one, or both, of the crimes. The majority (88%) of these received a local-responsible (jail) term, for which the median sentence was two months; only three of these were given the maximum allowable jail term of 12 months for the single offense, while 23 of these offenders were sentenced to terms of more than 12 months following conviction for multiple misdemeanors.

Under the proposal, a third or subsequent conviction for an assault committed under these circumstances (or in combination with convictions for assault of a family or household member) would become a Class 6 felony. For the two year period, 60 offenders, sentenced for misdemeanor crimes only, were identified as qualifying for felony prosecution under the proposal who did not appear to qualify for felony prosecution under the existing statute.

According to FY2008 and FY2009 Sentencing Guidelines (SG) data, one-third (32%) of offenders convicted of a felony under § 18.2-57.2(B) for a third or subsequent assault of a family or household member (as the primary, or most serious, offense) were given a state-responsible (prison) term. The median sentence in these cases was 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands assaults covered by § 18.2-57.2 and, therefore, expands the felony provision for a third or subsequent offense. In this way, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be 20 beds by FY2016. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$542,002.

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

FY11	FY12	FY13	FY14	FY15	FY16
9	17	19	19	19	20

Local adult correctional facilities. The proposal is expected to decrease the need for local-responsible (jail) beds, as some offenders convicted of misdemeanors will, under the proposal, be convicted of felonies and be given prison sentences. The impact on local-responsible (jail) beds is estimated to be a decrease of eight beds by FY2016 (state savings: \$88,989; local savings: \$98,293).

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

FY11	FY12	FY13	FY14	FY15	FY16
-4	-7	-8	-8	-8	-8

Adult community corrections resources. 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.

Virginia's sentencing guidelines. As misdemeanors, convictions under §§ 18.2-57 and 18.2-57.2(A) are not covered by the sentencing guidelines as the primary (most serious) offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. The guidelines do cover the third or subsequent conviction for assault of a family or household member (§ 18.2-57.2(B)), a Class 6 felony. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal may increase juvenile correctional center (JCC) bed space needs. Although the number cannot be quantified, it is expected to be small.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal may increase the bed space needs of juvenile detention facilities by a small amount.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$542,002 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 2009.
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 2009.
3. Cost per prison bed was assumed to be \$27,700 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 FY2008 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.93 per day or \$10,932 per year. The local cost was calculated by using the daily expenditure cost of \$67.99 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 \$33.06 per day or \$12,075 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. Adding assault and battery committed in violation of a protective order to the misdemeanor provision of § 18.2-57.2 will not have any affect on the overall number of offenders convicted for misdemeanor assault, since such an assault currently can be prosecuted under the general assault statute (§ 18.2-57).
2. Adding assault and battery committed in violation of a protective order to the felony provision of § 18.2-57.2 will result in additional felony convictions for third or subsequent violations. The number of additional felony offenders was based on offenders, sentenced for misdemeanor crimes only, that were identified as qualifying for felony prosecution under the proposal who did not appear to qualify for felony prosecution under the existing statute. For the 60 identified offenders, it was assumed that 100% would be convicted under the felony provisions.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2010, 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 a third or subsequent conviction for assault of a family or household member under § 18.2-57.2(B).
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, 2008. For assaults, this rate was 10.7%.

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