



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 967

(Patron – Bell)

LD#: 12103148

Date: 1/6/2012

Topic: Definition of Law Enforcement Officer

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$200,311 (7 beds)
- **Local Adult Correctional Facilities:**
\$57,098 (6 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

Currently, there are approximately 595 campus police officers¹ at public and private colleges and universities in Virginia that are sworn officers, but are excluded from the definition of “law enforcement officers” in certain statutes of the *Code of Virginia*. This proposal would add campus police officers to the following, expanding certain protections and benefits:

§ 9.1-101:

- publishing an officer’s personally identifying information to coerce or harass (§ 18.2-186.4), a Class 6 felony, with a mandatory minimum sentence of six months;
- capital murder of a law enforcement officer (§ 18.2-31), for which the punishment is death or life in prison;

§ 18.2-57:

- assaulting a law enforcement officer, a Class 6 felony with a six-month mandatory minimum term of confinement;

§ 18.2-308:

- affording the rights and responsibilities of other law enforcement officers concerning carrying concealed weapons and concealed weapons permits;

§ 18.2-308.2.2:

- exempting from criminal background check requirements for the purchase or sale of firearms;

§§ 19.2-81, 19.2-81.3:

- providing the same authority as that of other law enforcement officers to arrest persons, without a warrant, and take them into custody, in certain circumstances;

§ 23-7.4:1:

- including eligible spouses and children in Virginia’s higher education tuition waiver program for the families of officers killed in the line of duty;

¹ Virginia State Police, *Crime in Virginia, 2010*, p.80, http://www.vsp.state.va.us/downloads/Crime_in_Virginia_2010.pdf.

§ 52-34.7

- inclusion in Virginia's Blue Alert program to assist in the apprehension of a person suspected in the death, serious injury or concern for a police officer missing in the line of duty; and

§ 65.2-402, 65.2-402.1:

- presumption of occupational exposure in certain worker's compensation claims.

By expanding the definition of law-enforcement officer under § 18.2-57, the proposal further expands protections against:

- pointing a laser at a law enforcement officer (§ 18.2-57.01), a Class 2 misdemeanor;
- disarming a law enforcement officer (§ 18.2-57.02) of a chemical/impact weapon, a Class 1 misdemeanor; and
- disarming a law enforcement officer of a firearm or stun-gun (§ 18.2-57.02), a Class 6 felony.

The proposal would *not* impact § 18.2-51.1, pertaining to bodily injury offenses against law enforcement officers, which uses a more narrow definition. It will continue to be necessary for officers, or their departments, at private colleges and universities, to meet requirements set forth by the Department of Criminal Justice Services in order to use the term "police."

Analysis:

According to FY 2008 through FY 2011 data from the Circuit Court Automated Information System (CAIS), there have been no convictions involving use of a law enforcement officer's identity to coerce or harass (§ 18.2-186.4).

According to FY2010 and FY2011 Circuit Court CAIS data, there were no convictions under § 18.2-31 for a completed act of the capital murder of a law enforcement officer. There were, however, nine cases that included the attempted capital murder of a law enforcement officer. Of these, five resulted in a life sentence, while the remaining four received a state-responsible (prison) sentence with a median of 34.6 years. Each of these offenders had a number of additional serious offenses and/or a prior criminal record. Also, one case included a conviction for accessory before the fact to the capital murder of a law enforcement officer, resulting in a state-responsible sentence of incarceration for 10.7 years.

Based on FY2010 and FY2011 Sentencing Guidelines data, 1,029 offenders were convicted of a felony for assault or assault and battery of a law enforcement officer, correctional officer, firefighter, etc., under § 18.2-57(C) during the two-year period. In 834 of the cases, the assault was the primary, or most serious, offense. Of these, nearly two-thirds (64%) of the offenders received a local-responsible (jail) sentence, with a median sentence length of 7.0 months. In addition, 2% of the offenders received probation or were sentenced to the time served by the offender while awaiting trial. For the 34% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years.

According to FY2010 and FY2011 General District Court CAIS data, when convicted of a misdemeanor assault (as the primary, or most serious offense), nearly half (48%) of offenders were given a jail term, with a median sentence length of roughly 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. Expanding the existing definition of "law-enforcement officer" to include campus police officers at public and private colleges and universities, as proposed, could slightly increase the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

Since campus police officers currently represent only 3.2% of the total number of sworn officers, any impact that might be related to a larger number of officers against whom an offense could be committed would be small.

Offenders who might be convicted of capital murder (§ 18.2-31) currently can be convicted of first-degree murder. Nearly all offenders convicted of first degree murder receive sentences in excess of six years. Therefore, any potential impact associated with additional offenders being given life sentences would occur beyond the six-year forecast window required by § 30-19.1:4. The potential impact, if any, associated with increased death penalty cases, could be a slight reduction in prison beds needed, as the average time served prior to execution is seven years.²

Likewise, cases involving offenses or attempted offenses of pointing a laser at or disarming a law enforcement officer (§§ 18.2-57.01 and 18.2-57.02) occur infrequently, and usually within the context of other serious offenses. Hence, the number of such cases would not necessarily be expected to increase with the addition of a small number of officers.

The proposed legislation increases the existing statutory penalty for an assault or assault and battery committed against a campus police officer. If campus police officers are assaulted, and these assaults result in convictions, at the same rate as other law enforcement officers, the proposal is expected to produce approximately 13 additional felony convictions a year by FY2018. The impact on state-responsible (prison) beds is estimated to be seven beds by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$200,311.

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

FY13	FY14	FY15	FY16	FY17	FY18
3	5	6	7	7	7

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 six beds by FY2018 (state costs: \$57,098; local costs: \$61,113).

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

FY13	FY14	FY15	FY16	FY17	FY18
4	5	5	5	5	6

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 net impact on local or state community corrections resources that may result from the proposal, but any impact is likely to 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.

² Department of Corrections, *State Responsible Offender Population Trends FY2006 - FY2010*, p. 14.
http://www.vadoc.state.va.us/about/facts/research/new-statsum/offenderpopulationtrends_fy06-fy10.pdf.

Juvenile correctional centers. According to the Department of Juvenile Justice, it is possible that a person under the age of 18 could be subject to the provisions of the proposed legislation. An adjudication for an offense that would be a Class 6 felony in juvenile and domestic relations district court would make that person eligible for commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code*. Therefore, the legislative proposal may have an impact on juvenile correctional center bed space needs. While the actual impact on juvenile correctional center bed space needs cannot be determined, it is likely to be small.

Juvenile detention facilities. It is possible that a person under the age of 18 could be subject to the provisions of the proposed legislation. In such an event, a person alleged to have committed a felony offense could be subject to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1 of the *Code*. In addition, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for post-dispositional detention under § 16.1-284.1. Therefore, the legislative proposal may have an impact on juvenile detention bed space needs. The actual impact on juvenile detention bed space needs cannot be determined, but it is likely to be small.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$200,311 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 2011.
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 2011.
3. Cost per prison bed was assumed to be \$27,688 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 FY2010 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.19 per day or \$10,296 per year. The local cost was calculated by using the daily expenditure cost of \$70.01 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 \$30.17 per day or \$11,020 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 a law enforcement officer currently covered by § 18.2-57(C). 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 2010 *Crime in Virginia* report, there were 17,785 total sworn officers (excluding campus police officers) in Virginia in CY2010. Since there were 834 felony convictions under § 18.2-57(C) (as the primary, or most serious, offense) during a recent two-year period, it was assumed that the number of assaults against law enforcement officers in CY2010 resulted in approximately 396 convictions under § 18.2-57(C) that year $[(834/2)*.95]$. This is a rate of 2.2% $[396/17,785]$. If campus police officers are assaulted, and these assaults result in convictions, at the same rate as for law enforcement officers, the proposal is expected to produce approximately 13 additional felony convictions a year by FY2018.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2012, 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, 2010. For assaults, this rate was 10.9%.

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