



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1751

(Patron – Miller)

LD#: 13101369

Date: 12/4/2012

Topic: Assault and battery of certain DBHDS employees

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$299,513 (10 beds)
- **Local Adult Correctional Facilities:**
\$53,244 (5 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 individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services (DBHDS) subject to the same penalties that apply when the victim is a law enforcement officer, correctional officer, firefighter, emergency medical service provider, or judge.

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 (§ 18.2-57(C)). The 2006 General Assembly extended these penalties to cover cases involving assault of a judge. In 2008, the General assembly added full-time sworn members of the enforcement division of the Department of Motor Vehicles and the 2009 General Assembly added Metropolitan Washington Airports Authority police officers to the definition of “law enforcement officer.” The 2011 General Assembly expanded the definition of law enforcement officer to include fire marshals who have been granted police powers and special agents of the Department of Alcoholic Beverage Control.

Currently, 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 services provider, or judge is a Class 1 misdemeanor.

Analysis:

As of October 12, 2012, 336 individuals provided control, care, or treatment of sexually violent predators in the custody of the Department of Behavioral Health and Developmental Services (DBHDS). According to DBHDS, in 2011, 99 physical assaults were committed against individuals providing control, care, or treatment of sexually violent predators in the custody of DBHDS. Fifteen

individuals were charged and convicted for the assault. Charges were pending against two others at the time of the current analysis.

According to the fiscal year (FY) 2011 and FY2012 Sentencing Guidelines database, 1,006 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 815 of the cases, the assault was the primary, or most serious, offense. Of these, nearly two-thirds (62.7%) of the offenders received a local-responsible (jail) sentence, with a median sentence length of 7.0 months. In addition, approximately 2% of the offenders received probation or were sentenced to time served awaiting trial. For the 35.6% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years.

According to FY2011 and FY2012 General District Court Case Management System¹ 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 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 an individual who provides control, care, or treatment of sexually violent predators committed to the custody of DBHDS. If these individuals are assaulted, and these assaults result in a conviction at the same rate as historically reported, the proposal is expected to produce approximately 15 additional felony convictions under § 18.2-57(C) a year. In this way, the proposal will increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be 10 beds by FY2019. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$299,513.

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

FY14	FY15	FY16	FY17	FY18	FY19
4	7	9	10	10	10

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 five beds by FY2019 (state costs: \$53,244; local costs: \$56,989).

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

FY14	FY15	FY16	FY17	FY18	FY19
4	5	5	5	5	5

Adult community corrections programs. Because the proposal relates to assaults committed by sexually violent predators in the custody of DBHDS, the impact on state community corrections resources 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.

¹ Formerly referred to as the Court Automated Information System (CAIS).

Juvenile correctional centers. The Department of Juvenile Justice reports that while this proposal could cause an increase in commitments, the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$299,513 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 2012.
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 2012.
3. Cost per prison bed was assumed to be \$29,081 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 who may be convicted of felony assault and battery of individuals who provide control, care, or treatment of sexually violent predators committed to the custody of DBHDS was based on information provided by DBHDS. Specifically, DBHDS reports that 15 offenders were convicted for assaulting individuals who provide control, etc., of sexually violent predators last year. If individuals who provide control, care, or treatment of sexually violent predators committed are assaulted, and these assaults result in a conviction at the same rate as historically reported, the proposal is expected to produce approximately 15 additional felony convictions under § 18.2-57(C) a year. Charges were pending against two additional individuals at the time of this analysis. Since these cases were not resolved, they were not included in the analysis.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2013, 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, etc., 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, 2011. For assaults, this rate was 9.2%.

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