



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 853

#### *Amendment in the Nature of a Substitute*

#### *(Patrons Prior to Substitute – Petersen and Ebbin)*

**LD#:** 13104319

**Date:** 1/21/2013

**Topic:** Assault and battery of certain individuals

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$22,731 (one bed)
- **Local Adult Correctional Facilities:**  
\$3,038 (less than one bed)
- **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 a magistrate or attorney for the Commonwealth subject to the same penalties that apply when the victim is a law enforcement officer, correctional officer, firefighter, emergency medical services 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 service provider, or judge is a Class 1 misdemeanor.

#### Analysis:

The Virginia State Supreme Court reports that, as of November 21, 2012, there are 397 magistrates employed across the Commonwealth. According to the Supreme Court, eight magistrates reported that they were threatened or assaulted between FY2008 and FY2012. Two individuals were charged and convicted of a misdemeanor for the assault; both of these offenders were sentenced to 12 months in jail.

The most recent figures available indicate that, in 2008, there were 120 Commonwealth’s attorneys and 603 full-time and 16 part-time assistant Commonwealth’s attorneys in the Compensation Board’s

budgetary database. The Compensation Board does not collect information on whether there have been any reported assaults on these prosecutors.

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%) received a local-responsible (jail) sentence, with a median sentence length of seven months. For the 35.6% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 1.7% were sentenced to the time served by the offender while awaiting trial.

According to FY2011 and FY2012 General District Court Case Management System<sup>1</sup> 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.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. DJJ reports an average of 345 intake complaints per year for the three most recent fiscal years (FY2010 to FY2012) for simple assault on a law enforcement officer, judge, correctional officer, or fire/rescue personnel. During the same period, an average of 16 juveniles were committed to DJJ each year for this offense.

---

### 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 magistrate or attorney for the Commonwealth. If magistrates are assaulted, and these assaults result in a conviction at the same rate as historically reported, this portion of the proposal is expected to produce less than one additional felony conviction under § 18.2-57(C) a year. If attorneys for the Commonwealth are assaulted, and these assaults result in convictions, at the same rate as magistrates, this portion of the proposal is expected to produce approximately one additional felony conviction a year by FY2019.

As a result, 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 approximately one bed by FY2019. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$22,731.

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

FY14	FY15	FY16	FY17	FY18	FY19
0	1	1	1	1	1

**Local adult correctional facilities.** The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be less than one bed by FY2019 (state costs: \$3,038; local costs: \$4,411).

**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

---

<sup>1</sup> Formerly referred to as the Court Automated Information System (CAIS).

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.

**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.** The Department of Juvenile Justice reports 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 needs cannot be determined.

---

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$22,731 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 FY2011 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.21 per day or \$10,304 per year. The local cost was calculated by using the daily expenditure cost of \$74.07 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 \$40.96 per day or \$14,961 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 a magistrate was based on information provided by the Virginia State Supreme Court. Specifically, the Supreme Court reports that two offenders were convicted for assaulting magistrates between FY2008 and FY2012. If magistrates are assaulted, and these assaults result in a conviction at the same rate as historically reported, the proposal is expected to produce less than one additional felony conviction under § 18.2-57(C) a year.
2. The number of offenders convicted for assaulting attorneys for the Commonwealth was estimated based on the rate at which offenders have been convicted for committing a simple assault against a magistrate, as reported by the Virginia State Supreme Court. According to the Supreme Court, two offenders were convicted for assaulting one of the 397 magistrates between FY2008 and FY2012. This represents less than one conviction per year (2 convictions/5 years) and results in a rate of .1% (.4/397). If attorneys for the Commonwealth are assaulted, and these assaults result in convictions, at the same rate as magistrates, this portion of the proposal is expected to produce approximately one additional felony conviction a year by FY2019.

**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 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%.

aslcourt01\_4319