



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 851

Amendment in the Nature of a Substitute

(Patron Prior to Substitute – LeMunyon)

LD#: 14104971

Date: 2/10/2014

Topic: Assault and battery of a campus police officer, etc.

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$271,646 (9 beds)
- **Local Adult Correctional Facilities:**
At least \$43,967 (4 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 a campus police officer subject to the same penalties that apply when the victim is a law enforcement officer, correctional officer, firefighter, emergency medical services provider, magistrate, or judge. Under § 18.2-57(F), a law enforcement officer is defined as “any full-time or part-time employee of a police department or sheriff’s office that 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 the Commonwealth.” The definition of law enforcement officer also includes conservation officers, special agents of the Department of Alcoholic Beverage Control, full-time sworn members of the enforcement division of the Department of Motor Vehicles, Metropolitan Washington Airports Authority police officers, certain fire marshals, 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 (§ 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. In 2013, the penalty enhancement was expanded to cover assaults of magistrates, certain employees of local and regional jails, and any individual directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or sexually violent predators in the custody of the Department of Behavioral Health and Developmental Services.

In *South v. Commonwealth*, the Virginia Court of Appeals ruled that the felony penalty defined in § 18.2-57(C) applies only if the victim fits within one of the listed categories or if he is an employee of

a police department or sheriff's office administered by the Commonwealth or local government (47 Va. App. 247, 623 S.E.2d 419 (2005)). In a subsequent unpublished opinion (*Guinyard v. Commonwealth*), the Appeals Court held that the definition of law enforcement officer under § 18.2-57(E) (now subsection F) is limited to categories of law enforcement officers that are explicitly enumerated in the subsection (07 Vap UNP 1185061 (2007)).

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, judge, etc., is a Class 1 misdemeanor.

Under § 18.2-57(D), battery against a teacher, principal, assistant principal or guidance counselor of any public or private elementary or secondary school while engaged in the performance of their duties is punishable as a Class 1 misdemeanor with a mandatory minimum term of confinement of two days. If the offender uses a firearm or other weapon prohibited on school property, the mandatory minimum term is increased to six months. The proposal expands these mandatory minimum terms to cover the battery of a school security officer or any full-time or part-time school employee while engaged in the performance of their duties. As defined in § 18.2-57(F), the term "school security officer" refers to individuals who are employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity.

Analysis:

The 2012 *Crime in Virginia* report¹, produced by the State Police, indicates that there were 637 sworn officers associated with the 26 college and university police departments that contributed to the report. Of these, 565 officers were associated with public institutions of higher education, while 72 were associated with privately owned schools. The number of assaults committed against these officers is unknown.

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

General District Court Case Management System (CMS)² data for FY2012 and FY2013 indicate that, when convicted of a misdemeanor assault (as the primary, or most serious offense), nearly half (49%) of the offenders were given a jail term, with a median sentence length of roughly one month. The remaining 51% did not receive 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 campus police officers are

¹ Virginia State Police (2012). *Crime in Virginia 2012*. http://www.vsp.state.va.us/downloads/Crime_in_Virginia_2012.pdf

² Formerly referred to as the Court Automated Information System (CAIS).

assaulted, and these assaults result in convictions, at the same rate as other law enforcement officers, the proposal is expected to produce approximately 14 additional felony convictions a year by FY2020. 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 nine beds by FY2020. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$271,646.

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

FY15	FY16	FY17	FY18	FY19	FY20
4	7	8	9	9	9

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 at least four beds by FY2020 (state costs: at least \$43,967; local costs: at least \$63,838). Since data regarding victims of assault and battery are insufficient to estimate the impact of expanding § 18.2-57(D) to cover additional school employees, this is a minimum estimate.

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

FY15	FY16	FY17	FY18	FY19	FY20
4	4	4	4	4	4

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 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 (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

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

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$271,646 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 2013.
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 2013.
3. Cost per prison bed was assumed to be \$30,006 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 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 2012 *Crime in Virginia* report, there were 17,996 total sworn officers (excluding campus police officers) in Virginia in CY2012. Since there were 815 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 CY2012 resulted in approximately 387 convictions under § 18.2-57(C) that year $[(815/2)*.95]$. This is a rate of 2.2% $[387/17,996]$. If campus police officers are assaulted, and these assaults result in convictions, at the same rate as for other law enforcement officers, the proposal is expected to produce approximately 14 additional felony convictions a year by FY2020.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2014, 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%.

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