



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1687

(Patron – Fariss)

LD#: 15102371

Date: 12/28/2014

Topic: Battery of school employees

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$74,727 (At least 2 beds)
- **Local Adult Correctional Facilities:**  
At least \$12,630 (At least 1 bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
\$51,331.16 (less than 1 bed) \*
- **Juvenile Detention Facilities:**  
Cannot be determined \*

\* Provided by the Department of Juvenile Justice

#### Summary of Proposed Legislation:

Currently, under § 18.2-57(D), battery of a teacher, principal, or other school employee is punishable as a Class 1 misdemeanor and carries a mandatory minimum term of confinement of two days. The proposal increases the penalty for this offense to a Class 6 felony, which is punishable by one to five years imprisonment. The proposal also establishes a six month mandatory minimum term of incarceration for this offense. Under the proposal, if the offense is committed by the use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the mandatory minimum sentence is increased to one year.

#### Analysis:

According to the General District Court Case Management System (CMS) for fiscal year (FY) 2013 and FY2014, a conviction for misdemeanor assault and battery against a teacher, principal, or other school employee under § 18.2-57(D) was the primary, or most serious, offense at sentencing in seven cases during the two-year period. All seven offenders were given local-responsible (jail) terms, with a median sentence of approximately 15 days. It is not known whether any of these offenses involved the use of a prohibited weapon.

According to Circuit Court CMS data for the same time period, one offender originally charged with felony assault on a law enforcement officer was convicted of misdemeanor assault and battery against a school employee; this individual was sentenced to serve six months in jail.

#### Impact of Proposed Legislation:

**State adult correctional facilities.** By increasing the penalty for assault and battery against a teacher, principal, or other school employee from a Class 1 misdemeanor to a Class 6 felony, and including a six

month (or, in cases involving a prohibited weapon, one year) mandatory minimum term of incarceration, 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 at least two beds by FY2021. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$74,727.

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

FY16	FY17	FY18	FY19	FY20	FY21
1	2	2	2	2	2

**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 one bed by FY2021 (state costs: at least \$12,630; local costs: at least \$18,212).

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

FY16	FY17	FY18	FY19	FY20	FY21
1	1	1	1	1	1

**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 and state community corrections resources that may result from the proposal.

**Virginia's sentencing guidelines.** Felony convictions under the proposed modifications to § 18.2-57(D) would not be covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for this crime may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** A juvenile may be committed to the Department of Juvenile Justice (DJJ) for any felony offense. Additionally, a juvenile may be committed for a misdemeanor offense only if the prior offenses include a felony offense or three separate misdemeanor offenses. Due to the increased penalties, DJJ expects the proposal could result in additional commitments to the state's juvenile correctional centers. Below are estimations of cost depending on four possible rate scenarios using the 2014 DJJ Direct Care Per Capita Cost of \$150,974:

- If the number of commitments for this penalty increased by 1%, there would be .34 additional commitments to DJJ, with an estimated fiscal impact of \$51,331.16 per year.
- If the number of commitments for this penalty increased by 2%, there would be .34 additional commitments to DJJ, with an estimated fiscal impact of \$51,331.16 per year.
- If the number of commitments for this penalty increased by 5%, there would be .35 additional commitments to DJJ, with an estimated fiscal impact of \$52,840.90 per year.
- If the number of commitments for this penalty increased by 10%, there would be .37 additional commitments to DJJ, with an estimated fiscal impact of \$55,860.38 per year.

DJJ has determined that, by changing the penalty scheme and the number of offenders who may be committed to DJJ using the lowest possible committed population increase model, the proposal will

increase the need for juvenile correctional center (JCC) beds. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$51,331.16.

**Juvenile detention facilities.** According to the Department of Juvenile Justice (DJJ), the impact of this proposal on bed space needs for juvenile detention centers cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$74,727 for periods of imprisonment in state adult correctional facilities and is \$51,331.16 for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the adult state-responsible and local-responsible analyses 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 2014.
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 2014.
3. Cost per prison bed was assumed to be \$30,397 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 FY2013 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.51 per day or \$10,413 per year. The local cost was calculated by using the daily expenditure cost of \$73.60 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 \$41.11 per day or \$15,015 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 sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2015, is phased in to account for case processing time.
2. It was assumed that prosecutors would charge all eligible offenders under the proposed felony provision.
3. 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).
4. 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, 2013. For assaults, this rate was 9.0%.

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