



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 973 (Patron – Ruff)

LD#: 15101572

Date: 12/18/2014

Topic: Assault and battery of certain individuals

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$2,325 (less than 1 bed)
- **Local Adult Correctional Facilities:**  
At least \$390 (less than 1 bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

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

\*Provided by the Department of Juvenile Justice

#### Summary of Proposed Legislation:

The proposal amends § 18.2-57 to make assault or assault and battery of an attorney for the Commonwealth or a deputy 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, magistrate, 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. The 2013 General Assembly extended these penalties to cover cases involving assault of a magistrate. 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, magistrate, or judge is a Class 1 misdemeanor.

#### Analysis:

According to the Compensation Board, there are currently 120 Commonwealth’s attorneys and 611 full-time and 9 part-time assistant Commonwealth’s attorneys in the Compensation Board’s budgetary database. The *Code of Virginia* does not currently contain a definition of deputy attorney for the Commonwealth. According to the Commonwealth’s Attorneys Services Council, practices regarding

the classification and titles assigned to certain assistant Commonwealth's attorneys vary across jurisdictions. Neither the Compensation Board nor the Commonwealth's Attorneys Services Council are able to provide the number of assistant Commonwealth's attorneys that are classified as deputy attorneys for the Commonwealth. The Compensation Board and the Commonwealth's Attorneys Services Council do not collect information regarding assaults on these prosecutors.

According to the fiscal year (FY) 2013 and FY2014 Sentencing Guidelines database, 1,031 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 847 of the cases, the assault was the primary, or most serious, offense. Of these, nearly two-thirds (61.9%) received a local-responsible (jail) sentence, with a median sentence length of seven months. For the 36.1% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 2.0% were sentenced to the time served by the offender while awaiting trial.

According to FY2013 and FY2014 General District Court Case Management System data, when convicted of a misdemeanor assault (as the primary, or most serious offense), half of the offenders were given a jail term, with a median sentence length of approximately 1.5 months. The remaining 50% were not given an active term of incarceration to serve after sentencing.

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### 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 attorney for the Commonwealth or a Deputy Commonwealth's attorney from a Class 1 misdemeanor to a Class 6 felony. While increasing the penalty for assaults against Deputy Commonwealth's attorneys may increase the state-responsible (prison) bed space needs, the number of assistant Commonwealth's attorneys who fall under this title is unknown. As a result, the impact of this portion of the proposal on prison bed space needs cannot be determined.

Since the number of elected Commonwealth's Attorneys is known, the number of assaults on these individuals can be estimated. According to the Supreme Court of Virginia, two offenders were convicted for assaulting one of the 397 magistrates between FY2008 and FY2012. If attorneys for the Commonwealth are assaulted, and these assaults result in convictions, at the same rate as magistrates, this part of the proposal is expected to produce less than one additional felony conviction under § 18.2-57(C) a year by FY2021. 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 bed space needs is estimated to be less than one bed by FY2021. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$2,325.

**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 FY2021 (state costs: at least \$390 local costs: at least \$562).

**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.

**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.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$2,325 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 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 offenders**

1. 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 less than one additional felony conviction a year by FY2021.

**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. 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, 2013. For assaults, this rate was 9.0%.