



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1226

(Patron – Adams)

LD#: 16100639

Date: 11/24/2015

Topic: Assault and battery of Department of Corrections investigators

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
None (\$0)
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
None (\$0)

- **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 any employee with internal investigations authority designated by the Department of Corrections 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.

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**Analysis:**

According to the Department of Corrections (DOC), as of September 14, 2015, 18 employees with internal investigation authority were designated by DOC pursuant to § 53.1-10(11). DOC reports that, in the past five years, one assault against one of these individuals occurred. According to the prosecuting attorney in the case, this charge was nolle prossed (not pursued) as part of a plea agreement involving additional offenses.

According to the fiscal year (FY) 2014 and FY2015 Sentencing Guidelines database, 1,012 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 816 of the cases, the assault was the primary, or most serious, offense. The majority of these offenders (59.1%) received a local-responsible (jail) sentence, with a median sentence length of seven months. For the 38.7% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 2.2% were sentenced to the time served by the offender while awaiting trial.

According to FY2014 and FY2015 General District Court Case Management System data, when convicted of a misdemeanor assault (as the primary, or most serious offense), just over half (51.0%) of the offenders were given a jail term, with a median sentence length of approximately 1.3 months. The remaining 49.0% 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 any employee with internal investigations authority designated by the Department of Corrections from a Class 1 misdemeanor to a Class 6 felony. In the last five years, however, no offender has been convicted for assaulting one of these agents. Therefore, the proposal is unlikely to increase the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

**Local adult correctional facilities.** Similarly, the proposal is unlikely to increase the local-responsible (jail) bed space needs of the Commonwealth.

**Adult community corrections programs.** The proposal is not expected to impact adult community corrections resources.

**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.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 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.**

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