



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1726 (Patron – Ransone)

LD#: 17100361

Date: 8/31/2016

Topic: Disarming a law enforcement officer

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$29,941 (1 bed)
- **Local Adult Correctional Facilities:**
At least -\$5,109 (less than 1 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

**Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends § 18.2-57.02 of the *Code of Virginia*, related to disarming a law enforcement officer. Under the proposal, the penalty for disarming a law enforcement or correctional officer of a chemical irritant or impact weapon would be elevated from a Class 1 misdemeanor to a Class 6 felony. In addition, the penalty for disarming a law enforcement or correctional officer of a firearm or stun weapon would be increased from a Class 6 felony to a Class 4 felony.

Analysis:

According to the General District Court Case Management System (CMS) database for fiscal year (FY) 2010 through FY2015, 12 offenders were convicted of a Class 1 misdemeanor under § 18.2-57.02 for disarming a law enforcement officer of a chemical or impact weapon. The majority (91.7%) of these offenders received a local-responsible (jail) term, with a median sentence of three months. The remaining offender did not receive an active term of incarceration to serve after sentencing.

Circuit Court CMS data for the same time period indicate that 63 offenders were convicted of a Class 6 felony under § 18.2-57.02 for disarming a law enforcement officer of a firearm or stun weapon. This offense was the primary, or most serious, offense in 12 of the cases. Of these, 50% received a local-responsible (jail) term, with a median sentence of three months. One-quarter (25%) did not receive an active term of incarceration to serve after sentencing. The remaining three offenders received state-responsible (prison) terms, with a median sentence of one year.

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 2.6 petitioned intake cases per year for the last three fiscal years (FY2014-FY2016) alleging a felony violation of § 18.2-57.02 by a person under the age of 18. During the same time period, only one juvenile was committed to DJJ with a felony violation of § 18.2-57.02 as a committing offense. DJJ also reports that there was an average of one petitioned intake case per year for a misdemeanor violation of § 18.2-57.02. No juveniles were committed to DJJ for this offense during the three-year period.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalties for disarming a law enforcement officer, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact of increasing the existing Class 1 misdemeanor to a Class 6 felony is estimated to be one bed statewide by FY2023. Pursuant to §30-19.1:4, the estimated amount of necessary appropriation is at least \$29,941. This is a minimum estimate, as the impact of elevating the existing Class 6 felony under § 18.2-57.02 to a Class 4 felony could not be projected because no similar existing Class 4 felony offense could be identified.

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

FY18	FY19	FY20	FY21	FY22	FY23
1	1	1	1	1	1

Local adult correctional facilities. The proposal is expected to decrease the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be less than one bed by FY2023 (state savings: approximately \$5,109; local savings: approximately \$7,508).

Adult community corrections programs. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may 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. Convictions under § 18.2-57.02 are not covered by the sentencing guidelines when these crimes are the primary (most serious) offense in a case. However, convictions for these crimes may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice reports that, due to recent operational and policy changes within the Department, the specific impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, 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 at least \$29,941 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 2015.
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 2015.
3. Cost per prison bed was assumed to be \$31,406 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 FY2014 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$30.57 per day or \$11,166 per year. The local cost was calculated by using the daily expenditure cost of \$78.53 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 \$44.93 per day or \$16,411 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 sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2016, is phased in to account for case processing time.
2. 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, 2014. For assault offenses, this rate was 9.1%.
3. It was assumed that prosecutors would charge all eligible offenders under the proposed felony provision.
4. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected misdemeanor cases will be similar to the distribution of sentences under the existing Class 6 felony provision for disarming a law enforcement officer under § 18.2-57.02.

Limitations

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria. Although Virginia Beach left the system in FY2009, it rejoined the system in October 2014.

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