



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 790 (Patron – Cosgrove)

LD#: 17100181

Date: 8/25/2016

Topic: Crimes against law-enforcement officers, etc.

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **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

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the 2016 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal expands several sections of the *Code of Virginia* relating to offenses against law-enforcement officers, firefighters, and other officials. Currently, under § 18.2-57, assault or assault and battery is punishable as a Class 1 misdemeanor. Pursuant to § 18.2-57(C), the penalty for this offense is increased to a Class 6 felony, with a mandatory minimum sentence of six months, if the victim is a law-enforcement officer, judge, magistrate, correctional officer, firefighter, etc., who is engaged in the performance of his or her public duties. The proposal removes the requirement that the victim be engaged in his or her official duties for the enhanced penalty enhancements to apply.

The proposal also broadens the applicability of § 18.2-51.1, which provides for enhanced penalties when individuals cause bodily injury to law-enforcement officers, firefighters, search and rescue personnel, and emergency medical services personnel. Specifically, the proposal expands this section to include instances in which the victim is not engaged in the performance of his or her official duties. Under § 18.2-51.1, an individual who maliciously causes bodily injury is guilty of a felony punishable by imprisonment for up to 30 years and is subject to a two year mandatory minimum term. If the offender causes the injury unlawfully, but not maliciously, the offense is punishable as a Class 6 felony and carries a mandatory minimum term of one year.

Under § 18.2-31(6), the willful, deliberate, and premeditated killing of a law-enforcement officer or fire marshal is punishable as capital murder if the killing is for the purpose of interfering with the performance of his official duties. The proposal expands this provision to apply to offenders who know or have reason to know that the victim is a law-enforcement officer, etc., but do not commit the offense to

interfere with the victim's official duties. While attempts to commit first degree murder are punishable by a maximum term of imprisonment of ten years, the maximum penalty for attempts to commit capital murder is life imprisonment (§ 18.2-25).

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**Analysis:**

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.

Sentencing Guidelines data for the same two year period indicate that 20 offenders were convicted of a felony under § 18.2-51.1 for maliciously wounding a law-enforcement officer, etc. This offense was the primary, or most serious, offense in 16 of the cases. All of these offenders received a state-responsible (prison) term, with a median sentence length of five years. An additional 10 offenders were convicted of a Class 6 felony under § 18.2-51.1 for non-malicious injury to a law-enforcement officer, etc. This was the primary offense in seven cases. The majority (71.4%) of these offenders were sentenced to a state-responsible (prison) term, with a median sentence of two years. The remaining two offenders received local-responsible (jail) terms of approximately one month and six months, respectively.

According to the Circuit Court Case Management System (CMS) for FY2014 and FY2015, there were no convictions under § 18.2-31(6) for a completed act of capital murder of a law enforcement officer. There were, however, 13 cases that included the attempted capital murder of a law enforcement officer. Of these, three resulted in a life sentence while the remaining ten received a state-responsible (prison) sentence, with a median sentence length of roughly 17.5 years.

For individuals convicted of a completed act of capital murder under § 18.2-31, the statutory maximum penalty is death. Data provided by the Department of Corrections indicate that inmates remain on death row for an average of 6.9 years prior to execution (based on the last 10 inmates executed).

Existing databases do not provide sufficient detail to determine the number of cases that would be affected by the proposal.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it expands the applicability several felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements. Existing databases do not provide sufficient detail to estimate the number of additional felony convictions, or potentially longer sentences, that would result from enactment of the proposal. As a result, the magnitude of the impact on prison bed space needs cannot be quantified.

**Local adult correctional facilities.** The proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

**Adult community corrections resources.** The proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders or potentially longer supervision terms. Therefore, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's sentencing guidelines.** The sentencing guidelines cover violations of §§ 18.2-51.1 and 18.2-57(C) that are processed in Virginia's circuit courts. Convictions under § 18.2-31 are not covered by the guidelines when these crimes are the primary offense in a case. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice, 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the 2016 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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