



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1504 ***(Patron – Carrico)***

LD#: 19102097

Date: 12/06/2018

Topic: Assault and battery of certain officers

Fiscal Impact Summary:

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-57 to make assault or assault and battery of certain federal officers or agents 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. The proposal would add the following to the definition of a law enforcement officer for the purposes of this provision: any special agent or law-enforcement officer of the United States Department of Justice, National Marine Fisheries Service of the Department of Commerce, Department of the Treasury, Department of Agriculture, Department of Defense, Department of State, Office of the Inspector General of the Department of Transportation, Department of Homeland Security, and Department of the Interior; any inspector, law-enforcement official, or police personnel of the United States Postal Service; any United States marshal or deputy United States marshal whose duties involve the enforcement of the criminal laws of the United States; any criminal investigator of the United States Department of Labor; any special agent of the Naval Criminal Investigative Service; and any special agent of the National Aeronautics and Space Administration.

The number of individuals employed in the specified capacities at the specified federal agencies, who would be added to the definition of a law enforcement officer under the proposal, is unknown. The number of assaults committed against these individuals within the Commonwealth is also unknown.

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)). This provision has been expanded to cover additional types of officers and professions during six of the last 12 legislative sessions.

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)).

Analysis:

According to the fiscal year (FY) 2017 and FY2018 Sentencing Guidelines database, 1,100 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 897 of the cases, the assault was the primary, or most serious, offense. Of those, 58.9% received a local-responsible (jail) term with a median sentence length of seven months. For the 37.8% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 3.3% were sentenced to the time served by the offender while awaiting trial.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of additional felony convictions 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. Similarly, the proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for state and local community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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.

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 2 of the Acts of Assembly of 2018, Special Session I, 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.