



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 5019 (Patrons – Reeves)

LD#: 20200191

Date: 08/18/2020

Topic: Assault and battery of a judge, magistrate, law-enforcement officer, etc.

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$11,555,392 (318 beds)
- **Local Adult Correctional Facilities:**
-\$2,160,316 (-174 beds)
- **Adult Community Corrections Programs:**
None (\$0)

- **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(C) related to assault or assault and battery of a judge, magistrate, law-enforcement officer, and other officials. Pursuant to § 18.2-57(C), assault or assault and battery is punishable as a Class 6 felony, with a mandatory minimum sentence of six months, if the victim is a judge, magistrate, law-enforcement officer, correctional officer, firefighter, etc., who is engaged in the performance of his or her public duties.

Under the proposal, this Class 6 felony under § 18.2-57(C) would be increased to a Class 5 felony with a mandatory term of confinement of one year. The proposal also specifies that if the violation under § 18.2-57(C) occurs during a state of emergency, as defined in § 44-146.16, the penalty would be a Class 3 felony with a mandatory minimum term of confinement of two years.

Analysis:

According to fiscal year (FY) 2018 and FY2019 Sentencing Guidelines data, 1,145 offenders were convicted of a felony for assault or assault and battery of a judge, magistrate, law-enforcement officer, etc., in violation of § 18.2-57(C). In 906 of the cases, a completed assault was the primary (or most serious) offense. More than half of the offenders (56.3%) received a local-responsible (jail) sentence for which the median sentence was seven months. For the 41.4% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 2.3% were sentenced to the time served by the offender while awaiting trial.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal increases the penalty for the current felony and increases the mandatory minimum term under § 18.2-57(C) to require a state-responsible (prison) term. Moreover, the proposal further increases the felony penalty under certain circumstances. Increasing the mandatory minimum required by § 18.2-57(C) from six months to one year is expected to increase prison bed space needs by at least 318 beds by FY2027. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$11,555,392. This is a minimum estimate, as this figure does not capture the potential impact associated with the increase in the statutory maximum penalty (from five to ten years) or the increase in penalty for violations committed during a state of emergency. The data are insufficiently detailed to identify all potentially affected cases.

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

| FY22 | FY23 | FY24 | FY25 | FY26 | FY27 |
|------|------|------|------|------|------|
| 106 | 268 | 308 | 317 | 318 | 318 |

Local adult correctional facilities. The proposal is expected to decrease the need for local-responsible (jail) beds, since offenders who are currently convicted of a completed offense under § 18.2-57 (C) must be sentenced to a state-responsible (prison) term. The impact is estimated to be 174 jail beds by FY2027 (state savings: \$2,160,316; local savings: \$3,252,280).

Adult community corrections resources. The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as they will stay in prison longer prior to being released to the community.

Virginia's sentencing guidelines. The sentencing guidelines cover felony violations of § 18.2-57(C) 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. 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 \$11,555,392 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 2019.
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 2019.
3. Cost per prison bed was assumed to be \$36,315 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.* Cost per jail bed was based on The Compensation Board's FY2018 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$34.07 per day or \$12,444 per year. The local cost was calculated by using the daily expenditure cost of \$88.14 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 \$51.29 per day or \$18,734 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 affected cases

1. Analysis includes all cases involving a completed offense under § 18.2-57 (C) as the primary (most serious) offense in the case or as an additional offense to a more serious felony.
2. Fiscal year (FY) 2018 and FY2019 Sentencing Guidelines data shows that there were 1,250 offenders convicted for a completed felony offense under § 18.2-57 (C) as the most serious offense or as an additional offense. It is assumed that these 1,250 offenders would serve at least one-year mandatory minimum term specified in the proposal.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2021, is phased in to account for case processing time.
2. It was assumed that all eligible offenders under § 18.2-57 (C) would be sentenced to a one-year mandatory minimum term of imprisonment that would run consecutively with any other sentence upon a conviction as proposed.¹ Identified offenders who received sentences less than the proposed mandatory minimum were assumed to serve the mandatory minimum term specified in the proposal. Offenders currently receiving sentences exceeding the proposed mandatory minimum were assumed to be unaffected by the proposed legislation.
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 the Department of Corrections' facilities were earning sentence credits as of December 31, 2018. For felons serving a prison term for person crimes, this rate was 8.25%.

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¹ Recent analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (2010 Annual Report of the Virginia Criminal Sentencing Commission).