

**Department of Planning and Budget**  
**2020 Special Session I - Fiscal Impact Statement**

**1. Bill Number:** SB5032 S1

**House of Origin**     Introduced     Substitute     Engrossed

**Second House**     In Committee     Substitute     Enrolled

**2. Patron:** Surovell

**3. Committee:** Judiciary

**4. Title:** Assault and battery; penalty.

**5. Summary:** Current law prohibits committing assault or assault and battery against another, knowing or having reason to know that such other person is a certain law-enforcement or public safety official including: judge; magistrate; law enforcement officer; correctional officer; a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections (DOC), a local or regional correctional facility, or the Department of Juvenile Justice (DJJ); an employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services (DBHDS); a firefighter; or a volunteer firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency, or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency. Violation of this provision is punishable as a Class 6 felony with a mandatory minimum term of confinement of six months. The substitute version of this bill removes the mandatory minimum removes the six-month mandatory minimum sentence.

The substitute bill provides that when any person charged with committing such offense where the degree of culpability is slight, due to such person's diminished physical or mental capacity or pervasive developmental disorder, or if there is no bodily injury, a jury or the court may find the accused not guilty of violating this subsection but guilty of a simple assault or assault and battery, which is punishable as a Class 1 misdemeanor.

The substitute bill also adds § 19.2-9.2 (Prosecution of assault and battery against a law-enforcement officer), which stipulates that before any arrest, indictment, or service of a petition in the case of a juvenile is made for a violation of subsection C of §18.2-57 (pertains to penalties for assault and battery against certain law-enforcement officials) where the alleged assault and battery was committed against a law-enforcement officer, such alleged assault and battery must be investigated by another law-enforcement officer who was not the subject of the alleged assault and battery and the arrest, indictment, or service of a petition shall be approved by the attorney for the Commonwealth.

**6. Budget Amendment Necessary:** No

**7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.

**8. Fiscal Implications:** Under the provisions of the substitute bill, a jury or the court would have the option of finding someone guilty of simple assault or assault and battery against certain law-enforcement officials if the accused person's culpability is slight, due to diminished physical or mental capacity or pervasive developmental disorder, or if there is no bodily injury to the law enforcement officer. In these cases, the violation would be punishable as a Class 1 misdemeanor with a six-month minimum term of confinement. In cases where the accused's culpability is not in question, violations are punishable as a Class 6 felony, but without the mandatory six-month sentence.

Based upon FY 2018 and FY 2019 Sentencing Guideline data obtained by the Virginia Criminal Sentencing Commission, 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) (assault and battery of a judge, magistrate, law enforcement officer, and other officials). 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.

Although the changes proposed by this bill may affect, by possibly reducing, state-responsible (prison) bed space needs and/or local-responsible (jail) bed space needs, it is not possible to estimate the magnitude of the impact at this time.

**9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Local and regional jails, Department of Juvenile Justice, Courts, Commonwealth's Attorneys, Public Defenders Office

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None