

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: SB1306 S1

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Morrissey

3. Committee: Judiciary

4. Title: Assault and battery; penalty.

5. Summary: Current law prohibits committing assault or 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 bill provides that an assault and battery resulting in a bodily injury against the officials listed above is punishable as a Class 6 felony and the bill eliminates the six-month mandatory minimum sentence.

The bill provides that if any person is charged with committing such an offense where the degree of culpability is slight, due to such person's diminished physical or mental capacity or diagnosis of autism spectrum disorder as defined in § 38.2-3418.17, or if there is no bodily injury, a jury or the court may find the accused guilty of a simple assault or assault and battery, which is punishable as a Class 1 misdemeanor.

The bill 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.

The substitute bill provides that if any person is charged with committing assault and battery (i) whose physical or mental capacity is diminished to the extent that he needs counseling or supervisory assistance or assistance with activities of daily living or instrumental activities of daily living or (ii) who has been diagnosed with an autism spectrum disorder as defined in § 38.2-3418.17, a developmental disability as defined in § 37.2-100, or an intellectual disability as defined in § 37.2-100, a jury or the court may find the accused guilty of a simple assault or assault and battery in violation of the proposed subsection. Violation is punishable as a Class 1 misdemeanor.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Preliminary. See line 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 meets the one of the criteria set in the substitute bill. In these cases, the violation would be punishable as a Class 1 misdemeanor. In cases where the accused does not meet the criteria, violations are punishable as a Class 6 felony, but without the mandatory six-month sentence.

According to fiscal year (FY) 2019 and FY 2020 Sentencing Guidelines data, 1,116 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 857 of the cases, a completed assault was the primary (or most serious) offense. More than half of the offenders (55.5 percent) received a local-responsible (jail) sentence for which the median sentence was seven months. For the 43.2 percent of offenders who were given a state responsible (prison) term, the median sentence length was 1.5 years. The remaining 1.3 percent were sentenced to the time served by the offender while awaiting trial.

By removing the mandatory minimum sentence associated with a Class 6 felony charge, this bill may affect, by possibly reducing, state-responsible (prison) bed space needs and/or local-responsible (jail) bed space needs. The cost of a bed in a DOC facility (prison) in FY 2020 was \$38,688 as calculated by the Department of Planning and Budget. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local jail.

Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both. Although there is not enough information available to reliably estimate the increase in jail population as a result of this proposal, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

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