

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB357 H1

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

2. Patron: Boysko

3. Committee: Courts of Justice

4. Title: Assault and battery of a law-enforcement officer; penalty.

5. Summary: Under current law, any person who commits an assault or an assault and battery against another knowing or having reason to know that such other person is an official listed in § 18.2-57(C) (includes judges, magistrates, law-enforcement offices, etc.) who is engaged in the performance of his public duties anywhere in the Commonwealth, is guilty of a Class 6 felony. Upon conviction, the sentence of such person must include a mandatory minimum term of confinement of six months.

The substitute bill establishes that it is an affirmative defense to prosecution of an individual for assault or assault and battery against a law-enforcement officer, as defined in § 18.2-57 (G), or a correctional officer, as defined in § 53.1-1, if at the time of the assault or assault and battery (i) the law-enforcement officer or correctional officer was responding to a request for service; (ii) (a) the individual had (1) a mental illness or (2) a neurocognitive disorder, including dementia, or a neurodevelopmental disability, including a developmental disability or intellectual disability, such as autism spectrum disorder, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association or (b) the individual met the criteria for the issuance of an emergency custody order pursuant to § 37.2-808; and (iii) the assault or assault and battery was caused by or had a direct and substantial relationship to the person's illness, disorder, or disability. Nothing in this subsection shall be construed to allow an affirmative defense for voluntary intoxication.

The substitute bill defines the term mental illness as a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual experiencing such disorder or for the safety of others.

6. Budget Amendment Necessary: Indeterminate

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

8. Fiscal Implications: The Virginia Criminal Sentencing Commission (VCSC) provided the following data to help assess the impact of this bill:

- According to fiscal year (FY) 2022 and FY2023 Sentencing Guidelines data, 1,091 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). In 813 of the cases, the assault was the primary, or most serious, offense. More than half of the offenders (54.9%) received a local-responsible (jail) sentence for which the median sentence was seven months. For the 35.5% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 9.6% did not receive an active term of incarceration to serve after sentencing and were likely sentenced to the time served by the defendant while awaiting trial.
- The 289 defendants who received a prison sentence for this offense would not have received such a sentence under the provisions of this bill (as long as there were no felony additional offenses in the event).

Therefore, the provisions of this bill may have the effect of fewer people being sentenced to jail or prison. The Commonwealth currently pays \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail, and \$15.00 a day for state responsible prisoner held in local jail. It also funds a large portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

The fiscal impact this bill may have on the Department of Health and Developmental Services (DBHDS) and on state and local law-enforcement agencies is not known at this time. The fiscal impact statement will be updated if additional information is received.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, local and regional jails, law-enforcement agencies, Department of Behavioral Health and Developmental Services, courts

10. Technical Amendment Necessary: No

11. Other Comments: None