



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill 1398 (Patron – Peake)

LD#: 25103911

Date: 01/06/2024

Topic: Assault and battery of a campus police officer, etc.

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$438,034 (8 beds)
- **Local Adult Correctional Facilities:**
\$94,489 (5 beds)
- **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

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends § 18.2-57 to make assault or assault and battery of a campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 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.¹ Specifically, the proposal expands the definition of a law enforcement officer in § 18.2-57(G) to include campus police officers. With this change, the punishment for assaulting a campus police officer would increase from a Class 1 misdemeanor to a Class 6 felony and require a six-month mandatory minimum term of confinement.

Under § 18.2-57(F), a law enforcement officer is defined as “any full-time or part-time employee of a police department or sheriff’s office that is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth.” The definition of law enforcement officer in this subsection also includes conservation officers, special agents of the Virginia Alcoholic Beverage Control Authority, full-time sworn members of the enforcement division of the Department of Motor Vehicles, police officers of the Metropolitan Washington Airports Authority, auxiliary police officers, auxiliary deputy sheriffs, and certain fire marshals.

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

¹ Under current law, offenders convicted of assault on a law enforcement officer, etc., under § 18.2-57(C) are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will serve a minimum of 67% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of this felony.

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 G) is limited to categories of law enforcement officers that are explicitly enumerated in the subsection (07 Vap UNP 1185061 (2007)).

By expanding the definition of a law enforcement officer in § 18.2-57(G), the proposal also expands the applicability of § 18.2-57.01 (pointing a laser at law enforcement, a Class 2 misdemeanor) and § 18.2-57.02 (disarming a law enforcement officer, a Class 6 felony if it involves the officer's firearm or stun weapon or a Class 1 misdemeanor if it involves the officer's chemical irritant or impact weapon).

Analysis:

The 2023 *Crime in Virginia* report², produced by the Virginia State Police, indicates that there were 701 sworn officers associated with the college and university police departments that contributed to the report. The number of assaults committed against these officers is unknown.

According to fiscal year (FY) 2023 and FY2024 Circuit Court Case Management System (CMS) data, 1,344 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 977 of the cases, the assault was the primary, or most serious, offense. Nearly two-thirds of the offenders (63.9%) received a local-responsible (jail) sentence for which the median sentence was 7.0 months. For the 32.0% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 4.1% 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.

General District Court CMS data for FY2023 and FY2024 indicate that, when convicted of a misdemeanor assault (as the primary, or most serious offense), over half (50.9%) of the offenders were given a jail term, with a median sentence length of approximately two months. The remaining 49.1% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation increases the statutory penalty for an assault or assault and battery committed against a campus police officer. If campus police officers are assaulted, and these assaults result in convictions, at the same rate as other law enforcement officers, the proposal is expected to produce approximately 14 additional felony convictions a year by FY2031. Because a portion of offenders convicted of assaulting a law enforcement officer receive a state-responsible (prison) term, the proposal is expected to increase the future prison bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be eight beds by FY2031. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$438,034.

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

FY26	FY27	FY28	FY29	FY30	FY31
4	6	7	8	8	8

² Virginia State Police (2024). *Crime in Virginia 2023*.

<http://https://vsp.virginia.gov/wp-content/uploads/2024/08/CRIME-IN-VIRGINIA-2023.pdf>

Local adult correctional facilities. The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be five beds by FY2031 (state costs: at least \$94,489; local costs: at least \$145,503).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY26	FY27	FY28	FY29	FY30	FY31
4	4	4	5	5	5

Adult community corrections programs. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal, but any impact is likely to small.

Virginia's Sentencing Guidelines. The Sentencing Guidelines cover violations of § 18.2-57(C) that are processed in Virginia's circuit courts. Assault on a law enforcement officer under § 18.2-57(C) is not defined as violent by § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the Guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) 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 is \$438,034 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 2024.
2. New cases resulting in state-responsible sentences were based on forecasts approved by the Secretary of Public Safety and Homeland Security's Offender Population Forecasting Policy Committee in September 2024.
3. Cost per prison bed was assumed to be \$54,915 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.*
4. Cost per jail bed was based on The Compensation Board's FY2023 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$56.38 per day or \$20,593 per year. The local cost was calculated by using the daily expenditure cost of \$148.62 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 \$86.82 per day or \$31,711 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 offenders

1. The number of offenders convicted for assaulting campus police officers was estimated based on the rate at which offenders have been convicted for committing a simple assault against a law enforcement officer currently covered by § 18.2-57(C). It was assumed that nearly all (95%) of the convictions under the existing provision resulted from assaults on law enforcement officers. According to the State Police 2023 *Crime in Virginia* report, there were 23,727 total sworn officers (excluding campus police officers) in Virginia as of

October 31, 2023. Since there were 977 felony convictions under § 18.2-57(C) (as the primary, or most serious, offense) during a recent two-year period, it was assumed that the number of assaults against law enforcement officers in CY2023 resulted in approximately 464 convictions under § 18.2-57(C) that year $[(977/2)*.95]$. This is a rate of 1.96% $[464/23,727]$. If campus police officers are assaulted, and these assaults result in convictions, at the same rate as for other law enforcement officers, the proposal is expected to produce approximately 14 additional felony convictions a year by FY2031.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2025, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences during FY2023-FY2024 for defendants convicted under the existing provision for assault and battery of a law enforcement officer under § 18.2-57(C).
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 Department of Corrections' facilities were earning sentence credits as of August 30, 2024. For assault offenses eligible for the enhanced sentence credits provided in § 53.1-202.3, this rate was 25.7%.

Limitations

1. The analysis does not include cases from Alexandria as data from that jurisdiction are unavailable.

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