

## Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. **Bill Number:** SB357 S3

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

2. **Patron:**    Boysko

3. **Committee:** Passed both Houses

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 bill establishes that it is an affirmative defense to prosecution of an individual for assault or assault and battery if such individual proves, by a preponderance of the evidence, that at the time of the assault or assault and battery (i) the individual's behaviors were a result of (a) mental illness as defined in § 37.2-100 or (b) a neurocognitive disorder, including dementia, or an intellectual disability or a developmental 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 (ii) the individual met the criteria for issuance of an emergency custody order pursuant to § 37.2-808.

The bill provides that if such individual does not prove by a preponderance of the evidence that at the time of the assault or assault and battery his behaviors were a result of his mental illness, intellectual disability, developmental disability, or neurocognitive disorder but the evidence establishes that his mental illness, intellectual disability, developmental disability, or neurocognitive disorder otherwise contributed to his behaviors, the finder of fact may find the accused guilty of a misdemeanor pursuant to subsection A.

The bill provides that this subsection cannot be used as an affirmative defense for voluntary intoxication.

6. **Budget Amendment Necessary:** Indeterminate

7. **Fiscal Impact Estimates:** Final. 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