



COMMONWEALTH of VIRGINIA

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The Honorable Ralph S. Northam
Member, Senate of Virginia
P.O. Box 9363
Norfolk, Virginia 23505

Dear Senator Northam:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the assault and battery statute, § 18.2-57, provides health care professionals who serve in correctional facilities with the same enhanced punishment protections afforded to law enforcement personnel.

Response

It is my opinion that, except for employees of the Department of Corrections involved in the care of inmates, and volunteers and members of a bona fide rescue squad who are engaged in the performance of their duties, medical personnel who provide care to inmates are not covered by the enhanced punishment provisions of § 18.2-57.

Applicable Law and Discussion

Section 18.2-57 provides in relevant part that

A. Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor

* * *

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is . . . a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department . . . or rescue squad member who is a member of a bona fide volunteer fire department or volunteer rescue or emergency medical squad regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or members as employees, engaged in the performance of his public duties, such person is guilty of a Class 6 felony, and, upon

conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Having found no controlling authority interpreting the provisions of the statute about which you inquire, it must be interpreted according to its plain language.¹ First, the statute plainly provides that assault and battery can be elevated to a felony if the crime involves “lifesaving or rescue squad member[s] who” are members of a “bona fide volunteer fire department or volunteer rescue or emergency medical squad.”

Second, for persons who are “employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates,” § 18.2-57(C) provides that an assault and battery against such persons, when the inmate “knows or has reason to know” these persons are involved in the care or treatment of inmates, constitutes a Class 6 felony. Therefore doctors, nurses, and other personnel who are employed by the Department of Corrections receive an additional level of protection from the statute. I note that the language “employed by” the Department of Corrections suggests that independent contractors who have a contract with the Department to provide care would not be covered by this language.²

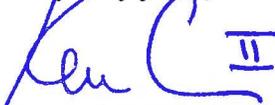
An assault and battery committed upon medical personnel not listed in the statute would not give rise to a felony charge. Thus, medical personnel employed by local or regional jails, and other persons providing medical care to inmates, such as personnel in the emergency room of a local hospital, are not covered under the enhanced penalty provisions of § 18.2-57(C). An assault and battery committed on such persons would constitute, at most, a Class 1 misdemeanor.

Conclusion

Accordingly, it is my opinion that, except for employees of the Department of Corrections involved in the care of inmates, and volunteers and members of a bona fide rescue squad who are engaged in the performance of their duties, medical personnel who provide care to inmates are not covered by the enhanced punishment provisions of § 18.2-57.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

¹ “When the language in a statute is clear and unambiguous, [courts will] apply the statute according to its plain language.” *Virginia Polytechnic Inst. v. Interactive Return Serv. Inc.*, 271 Va. 304, 309, 626 S.E.2d 436, 438 (2006). *See, e.g.,* *South v. Commonwealth*, 47 Va. App. 247, 623 S.E.2d 419 (2005); *Cline v. Commonwealth*, 53 Va. App. 765, 675 S.E.2d 223 (2009) (limiting the application of § 18.2-57(C) to “law-enforcement officers” as explicitly defined in the section).

² This conclusion is strengthened by the rule of lenity. Under this rule of statutory construction, penal statutes “must be strictly construed against the state and limited in application to cases falling clearly within the language of the statute.” *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).