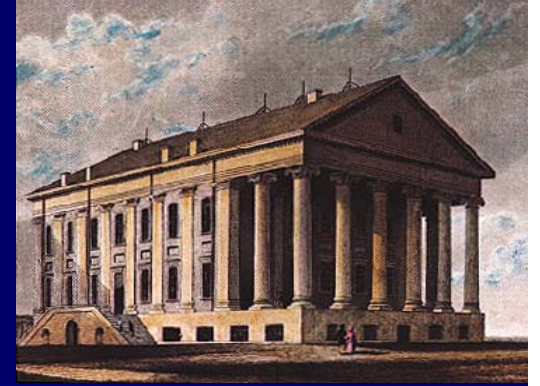


Virginia State Crime Commission

SJR 358 and HB 2436: Hospital
Emergency Room Violence

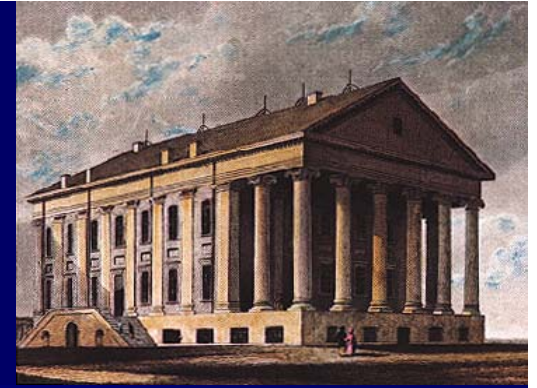
September 16, 2009

Agenda



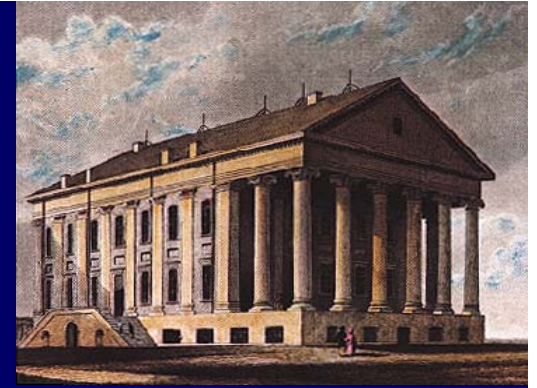
- Study Authorization
- Methodology
 - Workgroup
 - Literature Review
 - Data Sources and Limitations
 - Field Observations
 - ER Security Awareness Training
- Overview of Assault Statute and Case Law
 - 50-State Survey
 - Va. Code § 18.2-57 and Case Law
- Discussion

Study Authorization



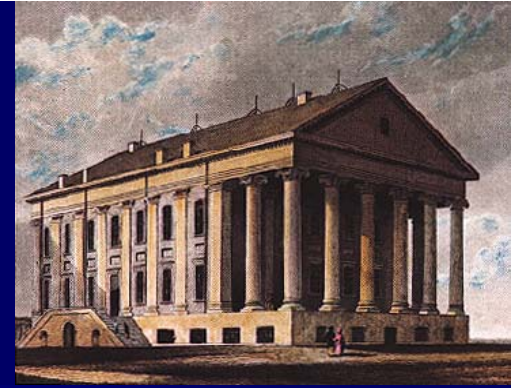
- Senate Joint Resolution 358 was introduced by Senator Stolle during the 2009 Session of the General Assembly, which directed the Crime Commission to study issues of public safety in hospital emergency rooms.
- Specifically, it was resolved that the Crime Commission be directed to:
 - Determine the occurrence of violent incidents in ERs across the Commonwealth;
 - Compile strategies that can be used by hospitals to prevent or deal with violent incidents; and,
 - Identify the most effective methods of preventing ER violence and of dealing with violent incidents when they occur.

Study Authorization



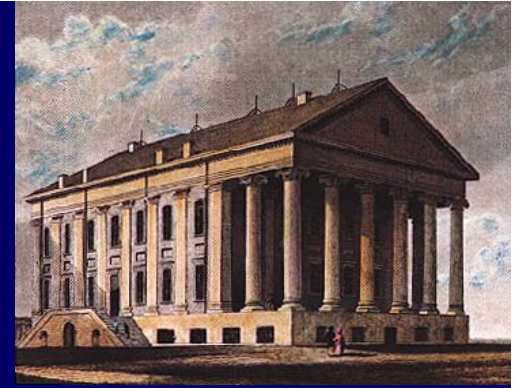
- Additionally, House Bill 2436 was introduced by Delegate Peace during the 2009 Session of the General Assembly and was incorporated into the study. Specifically, the bill sought to add specific emergency room employees (doctors, nurses, physicians assistants, nurse practitioners) to section C of § 18.2-57 -- list of felony assault and battery penalties.
 - Under the proposed change to Va. Code § 18.2-57(C), if a person committed an assault/battery against one of these named individuals “engaged in the performance of their duties” or “rendering medical care,” they could be convicted of a Class 6 felony, with a mandatory minimum confinement of 6 months.

Methodology



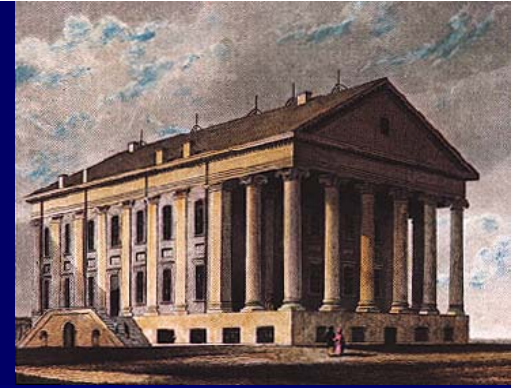
- Staff has undertaken a number of activities to examine the issue, including:
 - Identifying and reviewing available data;
 - Completing a literature review;
 - Creating a workgroup of practitioners;
 - 50 state survey;
 - Conducting field observations; and
 - Attending ER security awareness training.

Methodology- Workgroup



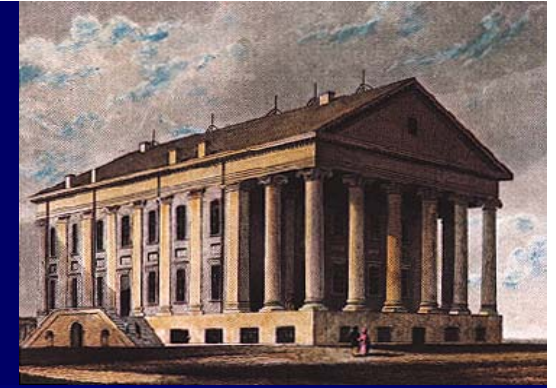
- Commission staff invited individuals who had experience and knowledge of ER violence to participate in a workgroup, which included the following representatives:
 - ER nurses;
 - ER doctors;
 - Hospital administrator;
 - Commonwealth's Attorneys;
 - Law enforcement;
 - Mental health/substance abuse services; and,
 - Health policy experts.

Methodology-Workgroup



- Based on discussions at the meeting, there are two areas of particular concern:
 - Limitation of available data to suggest the frequency and nature of assaults on ER personnel;
 - Availability and type of security at hospital ER's.

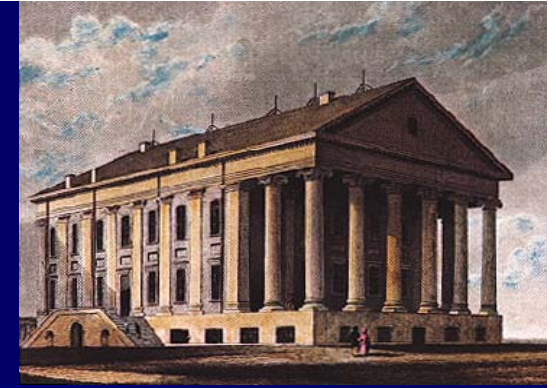
Data Sources and Limitations



- According to Virginia Health Information (VHI), there are 80 hospitals with emergency departments (ER's) in the Commonwealth.*
 - 53 have psychiatric/substance abuse emergency services available 24/7;
 - 13 have psychiatric services separated from the ER.

* As of October 31, 2008.

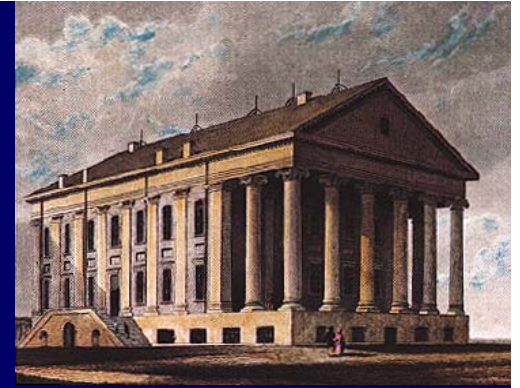
Data Sources and Limitations



- There were over 3.1 million total patients statewide that were attended in the ER during the FY ending in 2007.

- Specifically, the number of patients attended by region, are as follows:
 - 13 Northwestern (638,760);
 - 9 Northern (529,242);
 - 24 Southwestern (625,041);
 - 16 Central (571,740); and,
 - 18 Eastern (790,024).

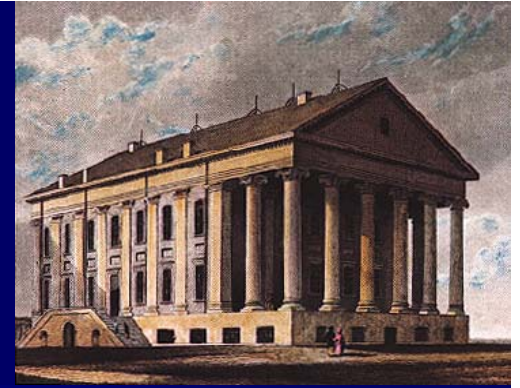
Data Sources and Limitations



- There were several sources identified as having potential data relating to ER violence, including:

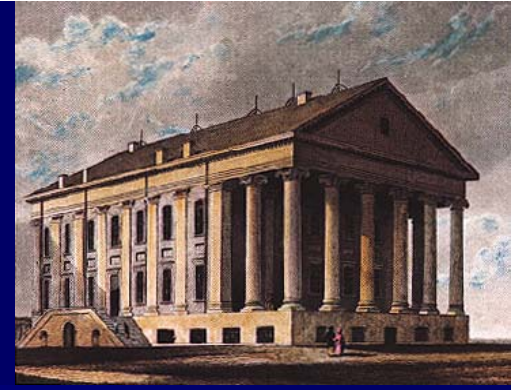
- Bureau of Labor Statistics;
- Virginia State Police;
- Virginia Health Information;
- AHA;
- VHHA;
- VA Department of Public Health; and,
- Local Police Departments and Sheriff's Offices.

Data Sources and Limitations



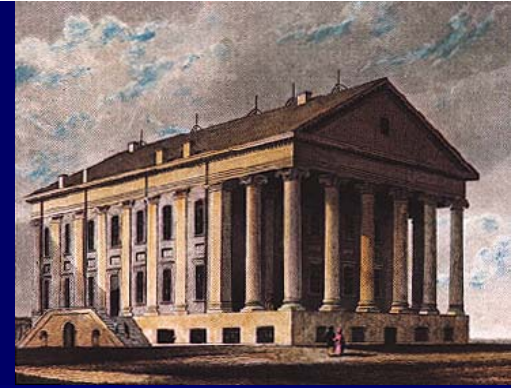
- However, of those where data was available, there were significant limitations. For example:
 - Bureau of Labor Statistics:
 - Only identifies injuries resulting in a day or more of missed work;
 - Unable to distinguish whether the injury from violence occurred in ER or other part of hospital.
 - Virginia State Police:
 - It is not mandated for law enforcement to report assaults by location; therefore, data available is limited to a few law enforcement agencies.
 - Unable to readily distinguish whether assault occurred in hospital, drug store or doctor's office.
 - If it is determined that assault took place in hospital, unable to distinguish if it was in ER or other part of hospital.
 - Local Police Departments and Sheriff's Offices:
 - Calls for service to hospitals can be retrieved, but do not necessarily reflect the true nature of the incident;
 - Incident reports may be requested; however, it is unclear as to whether all law enforcement agencies will be able to distinguish whether the assault took place in the ER or other part of hospital.

Literature Review



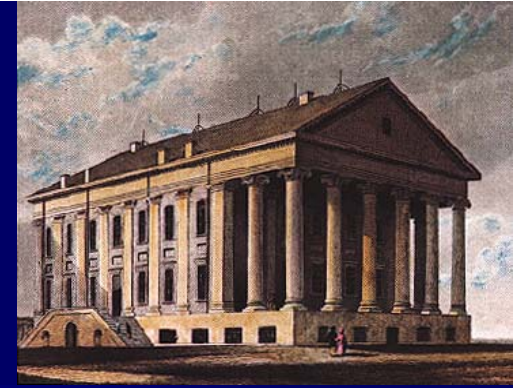
- There is scant literature that rigorously evaluates the scope and nature of ER violence. Studies are typically limited by:
 - Sample size; and/or,
 - Generalizability.

Field Observations and ER Security Awareness Training



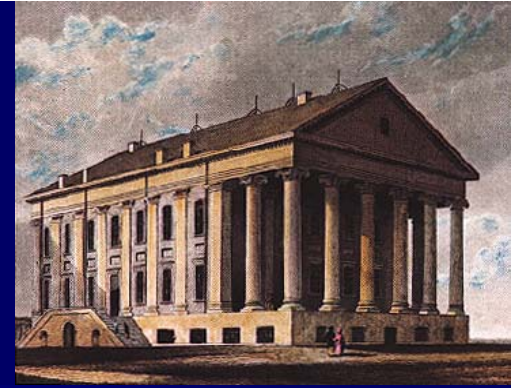
- Staff has conducted field observations at hospitals with ER's.
- Staff also attended two ER Security Awareness Training seminars.
 - Hosted by VCU Health System Security Specialists.
 - Each 4 hour class covers the following topics:
 - Situational awareness;
 - Client assessment;
 - Crisis prevention and intervention;
 - Escape training; and,
 - Site specific role-playing.

Reasons for Violent Behavior in ER's



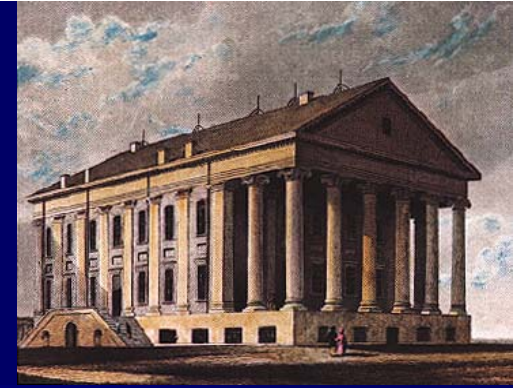
- Overcrowding in ER waiting rooms.
- Long wait times.
- Patients with mental illness.
- Patients with substance abuse problems or patients that are under the influence of alcohol/drugs.
- Shortage of ER personnel.

Preventive Measures in ER's



- Security Awareness Training;
- Panic buttons;
- Call boxes in parking lots and near buildings;
- ER lockdown capabilities;
- 24/7 armed security or police department;
- Security “standby” programs; and,
- Detection of weapons.

Problems Identified



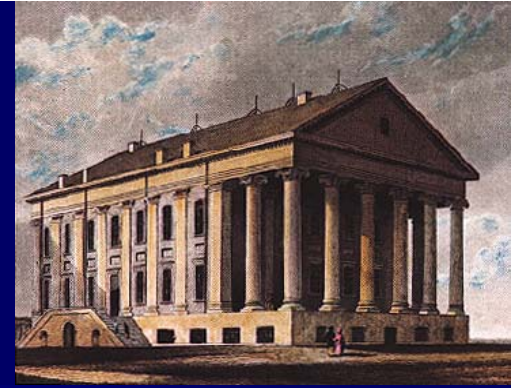
- There is no standardized measurement or reporting mechanism for ER violence. Therefore, there is no reliable data to confirm the number and type of assaults upon ER personnel.
- There is no requirement to report violent incidents at ER's.
- Types of security and security training are varied across ER's/hospitals in the Commonwealth.
 - Security measures and programs vary from hospital to hospital, even within hospital systems.
- There is no state-wide requirement for ER personnel safety training.
- There is a general reluctance among ER personnel to press charges against patients who are either mentally ill or severely intoxicated, as well as difficulty prosecuting mentally ill patients.

Other State Responses



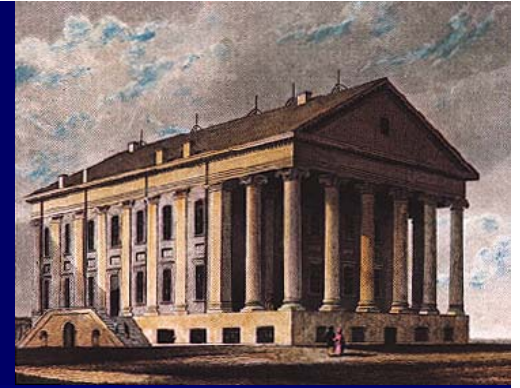
- In Massachusetts there have been some recent efforts to address ER violence. There are two bills still active, though no action has been taken on them recently, that address ER violence;
 - Senate Bill 1345 would require health care employers to develop and implement programs to prevent workplace violence; and,
 - House Bill 1700 was introduced to increase the penalty for assault and battery upon a health care provider from a misdemeanor to a felony.
- Oklahoma very recently increased the penalty for an assault upon an ER personnel to a felony.
- New Jersey passed the “Violence Prevention in Health Care Facilities Act,” effective in 2008 which required hospitals to create a violence prevention program and mandated detailed reporting of violent incidents in hospitals.
 - Oregon also passed a similar measure in 2007.

Overview of Assault Statute and Case Law



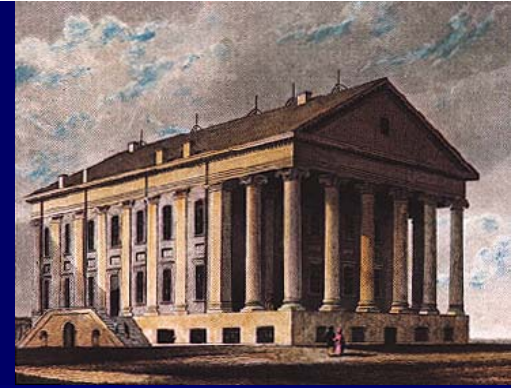
- Staff conducted a review of existing assault statutes in the other 49 States.
 - 26 of these states include an increased penalty for an assault upon emergency room personnel.
 - In 24 of those states, the increased penalty is a felony.
 - Additionally, in at least 9 of these states, actual physical harm or contact must accompany the assault to qualify for the enhanced penalty.

Overview of Assault Statute and Case Law



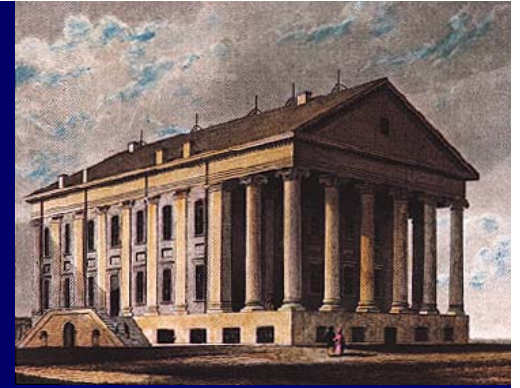
- Va. Code § 18.2-57 outlines the penalty for “simple” assault and battery.
 - The acts that constitute an assault or battery are defined by common law.
- “Simple” assault and battery is punished as a class 1 misdemeanor.
 - If the victim was “intentionally selected” because of race, religious conviction, color or national origin, then the penalty “shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.”

Overview of Assault Statute and Case Law



- There is also an enhanced penalty if a person commits a battery against a full or part-time teacher, principal or assistant principal, or guidance counselor, in a school, and if the person knows or has reason to know that person was “engaged in the performance of their duties.”
 - While still a Class 1 Misdemeanor, if convicted, the sentence shall include 15 days confinement in jail, with a mandatory minimum sentence of two days. However, if the offense is committed by use of a firearm or other weapon prohibited on school property the person shall serve a mandatory minimum sentence of six months.

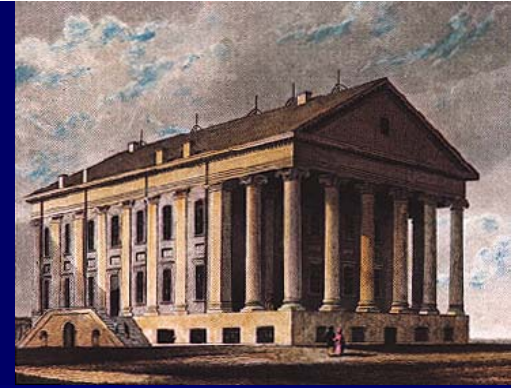
Overview of Assault Statute and Case Law



- However, the statute also requires enhanced punishment as a Class 6 felony if:
 - The victim was selected because of race, religious conviction, color or national origin and there was bodily injury, the penalty is confinement of 6 months and a mandatory minimum of 30 days; or,
 - The defendant knowingly assaults the following persons, when they are “engaged in the performance of their public duties:”
 - Judge
 - Law enforcement officer
 - Corrections officer
 - Firefighter
 - Volunteer firefighter
 - EMS
 - Bodily injury is not required to receive the enhanced penalty.

Overview of Assault

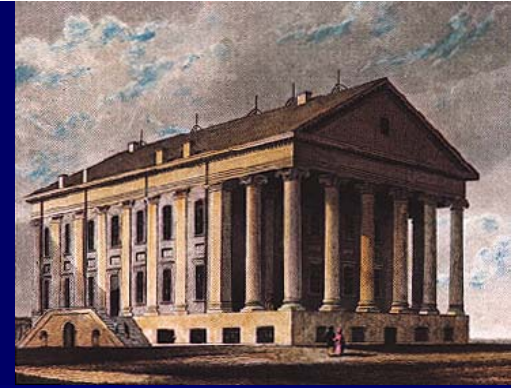
Statute and Case Law



- **As defined by common law, criminal assault:**
 - “requires that the accused attempt or offer with force or violence to do a corporal hurt to another...as by striking him, or even holding up one’s fist at him in a threatening or insulting manner, or pointing a weapon at him within reach” Vaughn v. Commonwealth, 263 Va. 31, 557 S.E.2d 220 (2002).

- **Battery, as defined by case law is generally considered the touching of another, willfully or in anger. It also includes:**
 - A touching done in a “rude” or “insulting” manner. Hinkel v. Commonwealth, 137 Va. 791, 119S.E. 53 (1923);
 - Making contact with a person, by an object set in motion by the defendant. Wood v. Commonwealth, 149 Va. 401, 140 S.E. 114 (1927);
or
 - Spitting on a person in a rude, insolent and angry manner. Gilbert v. Commonwealth, 45 Va. App. 67, 608 S.E.2nd 509 (2005).

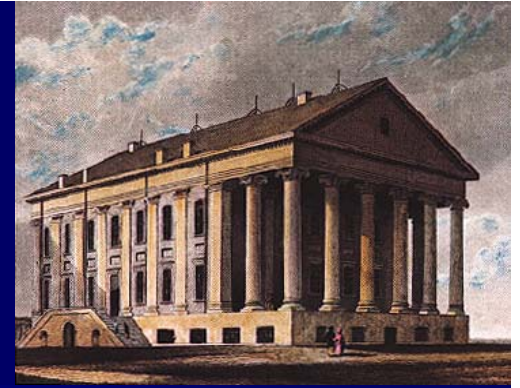
Legislative History of VA Assault Statute



- Va. Code § 18.2-57 (1975)

- “Any person who shall commit a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor.”

Legislative History of VA Assault Statute

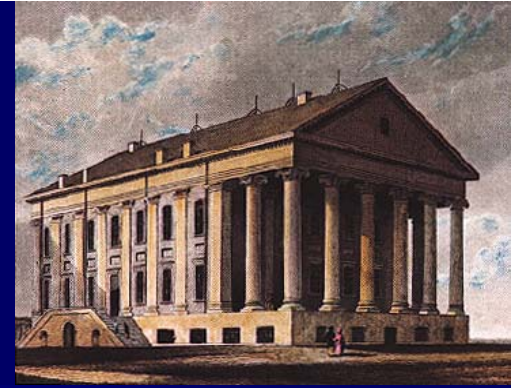


- **1994: race, religious conviction, color or national origin. (simple assault)**
 - Mandatory minimum of 6 months, 30 days shall not be suspended.

- **1997: race, religious conviction, color or national origin. (assault and battery)**
 - Class 6 felony; mandatory minimum 6 months.
 - Law enforcement officers and firefighters.
 - Class 6 felony; mandatory minimum 6 months.

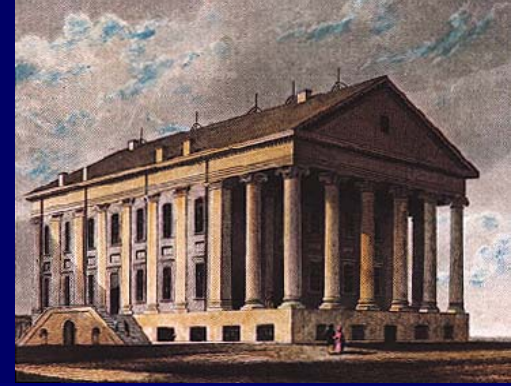
- **1999: Correctional officers.**
 - Class 6 felony; mandatory minimum 6 months.
 - teachers, principals, assistant principals, or guidance counselors.
 - Class 1 misdemeanor; mandatory minimum 15 days
 - use of a firearm or other weapon prohibited on school property
mandatory minimum of 6 months.

Legislative History of VA Assault Statute



- 2000: Game wardens and correctional officers defined as “law enforcement.”
- 2001: Regional jail officers defined as law enforcement.
- 2002: Exempts teachers, principals, assistant principals, guidance counselors, or school security officers from assault and battery charges when in the course and scope of his acting official capacity.

Legislative History of VA Assault Statute



- 2004: Volunteer firefighter or lifesaving or rescue squad member who is a member of a bona fide volunteer fire department or volunteer rescue or emergency medical.
- 2006: Judges, teachers aids, school bus drivers and school bus driver aids.
- 2008: DMV enforcement personnel.
- 2009: Police officers of the Metropolitan Washington Airports Authority.

Discussion