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HOUSE BILL NO. 2328

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 4, 2001)

(Patron Prior to Substitute—Delegate Baskerville)

*A BILL to amend and reenact §§ 16.1-253.2, 18.2-57.2, and 18.2-60.4 of the Code of Virginia, relating to violations of protective orders, assault and battery of a family or household member; penalty.***Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-253.2, 18.2-57.2, and 18.2-60.4 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or subsection B of § 20-103, which prohibits such person from going or remaining upon land, buildings or premises or from further acts of family abuse, or which prohibits contacts between the respondent and the respondent's family or household member as the court deems appropriate ~~shall be~~ *is* guilty of a Class 1 misdemeanor. Upon conviction, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.

Any person charged with a violation of this section shall be tried within forty-five days of being arrested or summoned for such charge, or as soon thereafter as practicable. The requirement of this paragraph is not jurisdictional, and shall not operate as a bar to prosecution.

§ 18.2-57.2. Assault and battery against a family or household member.

A. Any person who commits an assault and battery against a family or household member ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

B. On a third or subsequent conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that (i) such person has been previously convicted twice of assault and battery against a family or household member, or of a similar offense under the law of any other jurisdiction, within ten years of the third or subsequent offense, and (ii) each such assault and battery occurred on different dates, such person ~~shall be~~ *is* guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in § 16.1-228 applies to this section.

E. Upon conviction for a violation of this section, where it is alleged in the warrant, information, or indictment on which the person is convicted, that (i) such person has been previously convicted of a violation of this section and (ii) within seventy-two hours of that person's release from incarceration for such previous conviction, committed a violation of this section, such person is guilty of a Class 6 felony.

F. Any person charged with a violation of this section shall be tried within forty-five days of being arrested or summoned for such charge, or as soon thereafter as practicable. The requirement of this paragraph is not jurisdictional, and shall not operate as a bar to prosecution.

§ 18.2-60.4. Violation of stalking protective orders; penalty.

Any person who violates any provision of a protective order issued pursuant to §§ 19.2-152.8, 19.2-152.9 or § 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act.

Any person charged with a violation of this section shall be tried within forty-five days of being arrested or summoned for such charge, or as soon thereafter as practicable. The requirement of this subsection is not jurisdictional, and shall not operate as a bar to prosecution.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$.