



## Impact Analysis on Proposed Legislation

*Virginia Criminal Sentencing Commission*

### House Bill No. 953

*(Patron – Baskerville)*

**Date Submitted:** 12/07/01

**LD #:** 02-5880624

**Topic:** Violation of protective orders, assault and battery of a family or household member

#### **Proposed Change:**

Amends §§16.1-253.2, 18.2-57.2 and 18.2-60.4 such that persons charged with violating a protective order, committing assault and battery against a family or household member or violating a stalking protective order shall be tried within forty-five days of arrest or summons, or as soon thereafter as practicable. This requirement is not jurisdictional and shall not operate as a bar to prosecution. In addition, committing an assault and battery against a family or household member (§18.2-57.2) within 72 hours of release from incarceration for a previous conviction for the same offense would be punishable as a Class 6 felony.

#### **Current Practice:**

Currently, violations of protective orders (§16.1-253.2) and violations of stalking protective orders (§18.2-60.4) are punishable as Class 1 misdemeanors. Although assault and battery of a family or household member (§18.2-57.2) is also punishable as a Class 1 misdemeanor, a third or subsequent conviction is punishable as a Class 6 felony. Additionally, upon conviction under §16.1-253.2, a term of confinement must be imposed and in no case is the entire term to be suspended. The *Code of Virginia* has no specific provisions regarding the timing of trial for these statutes.

According to the Local Inmate Data System (LIDS) data, during fiscal (FY) 2001, 929 offenders held pretrial or post-trial in the local jail were convicted for violation of §16.1-253.2. Nearly all (94.3%) of the offenders convicted under this statute received a local-responsible (jail) term, with a median sentence of less than one month (see *Background Sentencing Information* below).

Based on FY2001 LIDS data, 3,750 offenders held pre- or post-trial in jail were convicted under the misdemeanor provisions of §18.2-57.2. The median sentence under the misdemeanor version (94% of cases) of §18.2-57.2 is one month. Four offenders were convicted for a subsequent misdemeanor violation of §18.2-57.2 where the new offense occurred within 72 hours of an offenders release from incarceration for the same offense; two were sentenced to four days, one to 30 days, and the third to six months. Third or subsequent offenses under §18.2-57.2 are already Class 6 felonies. According to Pre/Post-Sentence Investigation (PSI) data for calendar (CY) 1999 and 2000 there were 275 felony convictions and, of these, one-third resulted in a prison term with a median sentence of 1.3 years (see *Background Sentencing Information* below).

LIDS data for FY2001 indicate that 19 offenders held pre- or post-trial in jail were convicted under §18.2-60.4. Of those, 95% received a local responsible sentence with a median sentence of one month (see *Background Sentencing Information* below).

Virginia's sentencing guidelines cover felony convictions under §18.2-57.2. Not all offenders convicted of this offense are recommended for a prison term when this offense is the primary, or most serious, offense in a sentencing event. Due to the seriousness of additional or prior record offenses, two-thirds of offenders convicted of §18.2-57.2 (as the primary offense) and sentenced during FY2001 were recommended by the guidelines for a range of incarceration that includes a prison term. When the guidelines call for prison, the midpoint recommendation is at least seven months.

### Background Sentencing Information

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Jail Sentence
Violation of the provisions of a protective order (§16.1-253.2)	929	5%	94%	1%	.7 mo.
Assault and battery of a family or household member (§18.2-57.2)	3750	4%	95%	1%	1 mo.
Violation of stalking protective order (§18.2-60.4)	19	5%	95%	0%	1 mo.

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.  
Data Source: FY2001 Local Inmate Data System (LIDS)

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Prison Sentence
Third or subsequent assault and battery of a family or household member (§18.2-57.2)	275	33%	34%	33%	1.3 yrs.

Data Source: CY1999 and CY2000 Pre/Post-Sentence Investigation (PSI) database.

### Impact of Proposed Legislation:

The only part of this proposal that may affect state-responsible (prison) bed space is the provision that a violation of §18.2-57.2 within 72 hours of the release from incarceration for a previous conviction under the same statute is punishable as a Class 6 felony. In this scenario, over the next six years, the net high state-responsible impact would be 3 beds. There is no expected impact on local-responsible (jail) beds. Any bed space savings that accrue from a shift of inmates to prison will likely be offset by longer jail sentences. The proposed §18.2-57.2 would affect only persons being convicted of a second violation, because conviction for a third violation is already a Class 6 felony. Therefore, a third or subsequent offense, regardless of when it occurs, should not result in a fiscal impact.

No impact is anticipated from the speedy trial provisions added to §§16.1-253.2, 18.2-57.2 by the proposal.

No adjustment to the sentencing guidelines would be necessary under the proposal.

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

FY03	FY04	FY05	FY06	FY07	FY08
1	2	2	3	3	3

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

FY03	FY04	FY05	FY06	FY07	FY08
0	0	0	0	0	0

**Pursuant to §30-19.1:4, the estimated amount of the necessary appropriation is \$70,398 for periods of imprisonment in state adult correctional facilities and is \$0 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's Committee on Inmate Forecasting in 2001.
2. New cases representing local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the PSI database.

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2002, is phased in to account for case processing time.
2. 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 December 31, 2000. For violent offenses, this rate was 8.8%.
3. Sentences for all persons affected under the proposed legislation were randomly drawn from sentences for persons convicted of the felony version §18.2-57.2 (3<sup>rd</sup> or subsequent assault and battery of a family or household member).