



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 863

(Patron – Byron)

Date Submitted: 01/14/04

LD #: 04-0931256

Topic: Assault and battery against a family or household member

Proposed Change:

This proposal amends § 18.2-57.2 to make an assault and battery against a family or household member a Class 6 felony if the offender has two prior convictions within the previous ten years for (a) assault and battery of a family or household member, (b) malicious wounding (§ 18.2-51), (c) aggravated malicious wounding (§ 18.2-51.2), (d) malicious bodily injury by means of a substance (§ 18.2-52), or (e) any combination of these offenses, each committed on a different date.

Currently, an assault and battery against a family or household member is a Class 6 felony only if the offender has two prior convictions for assault and battery against a family or household member within the previous ten years and each offense was committed on a different date. The proposal expands the list of prior record offenses that elevate an assault and battery against a family or household member to a Class 6 felony

Data Analysis:

Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 357 offenders were convicted under the felony provisions §18.2-57.2 (B). Of these, 97 (27%) were sentenced to probation without an active term of incarceration, 134 (38%) to a local-responsible (jail) term, and 126 (35%) were sentenced to a state-responsible (prison) term, with a median sentence of 18 months.

According to the Local Inmate Data System (LIDS), which contains information on offenders held pre- or post-trial in jail, there were 4,608 misdemeanor convictions during fiscal year (FY) 2001 and FY2002 for violations of § 18.2-57.2(A). Nearly all (93%) of these offenders received a local-responsible (jail) term, with a median sentence of one month. Less than 1% received a state-responsible (prison) term due to an accompanying felony charge. Of total 4,608 misdemeanor offenders, 268 meet the criteria of being charged with assault of a family or household member and having at least two previous convictions for assault crimes specified in the proposal. In these cases, 93.3% (250) received a local-responsible (jail) term, with a median sentence of two months. Only one offender received a state-responsible sentence. However, a full two years of data were not available for this analysis; LIDS data only include offense-specific information starting on January 1, 2000. Therefore, the actual number of offenses

committed during FY2000 and FY2001 may be higher than those reported in this impact statement. Consequently, any impact based on this data may be an underestimate.

Impact of Proposed Legislation:

The proposed legislation expands the list of prior record offenses that elevate an assault and battery against a family or household member under § 18.2-57.2 from a Class 1 misdemeanor to a Class 6 felony. Applying sentences for the current crime (3rd or subsequent assault and battery of a family or household member) to the additional number of offenders who will qualify for felony punishment indicates that the proposal will increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, the net high state-responsible impact would be about 70 beds. The number of offenders affected by the proposal may be underestimated due to limitations in historical data.

In addition, there will be an impact on local-responsible (jail) bed space. Based on the same methodology, there will be an increased need for 12 beds statewide, for a cost to the state of \$133,334 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost to localities of \$90,734 for the same beds.

Because the expanded list of prior record offenses includes felonies (and not just prior misdemeanor domestic assault convictions, as under current law), sentences for cases affected by the proposal may be longer than those used to project the impact. Empirical research has shown a strong relationship between an offender's criminal history and sentence length. Therefore, the projected impact may underestimate the actual impact of the proposal.

Felony convictions under § 18.2-57.2 are covered by the sentencing guidelines as the primary (or most serious) offense. No adjustment to the sentencing guidelines would be necessary under the proposal.

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

FY05	FY06	FY07	FY08	FY09	FY10
12	36	49	54	62	70

Estimated Six-Year Impact in Lo-Responsible (Prison) Beds

FY05	FY06	FY07	FY08	FY09	FY10
7	9	9	9	11	12

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,591,303 for periods of imprisonment in state adult correctional facilities and \$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 2003.
2. New cases representing state-responsible sentences were based on forecasts approved by the Secretary's Committee on Inmate Forecasting in August 2003. New cases representing local-responsible sentences were

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

based on forecasts developed by the Virginia Criminal Sentencing Commission using the Local Inmate Data System (LIDS) database.

3. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions Relating to Sentence Lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. Release dates for state-responsible felony convictions were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002. For assault offenses, this rate was 90.8%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants sentenced in FY2003 with no accompanying felony conviction; this rate was 39.66%.
3. Sentences for persons convicted of assault and battery of a family or household member who had at least two previous convictions for any of the specified assaults were assumed to be affected by the proposal. To estimate the impact on these offenders, sentences were randomly drawn from sentences for the crime of 3rd or subsequent assault of a family or household member (§ 18.2-57.2), a Class 6 felony. The projected sentence was applied only if it exceeded the actual sentence in the case.

aslfam04_0931