



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 863

As Engrossed

(Patrons Prior to Engrossment – Byron and Albo)

Date Submitted: 2/9/04

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 offenses against a family or household member involving any combination of the following crimes: assault and battery of a family or household member, malicious wounding (§ 18.2-51), aggravated malicious wounding (§ 18.2-51.2), or malicious bodily injury by means of a substance (§ 18.2-52). As proposed, each of the offenses must have been committed on a different date for the felony penalty to apply.

Currently, an assault and battery against a family or household member is a Class 6 felony only if the offender has two prior misdemeanor 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:

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 FY2001 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. Due to limitations in the data, the number of offenders convicted of a misdemeanor assault and battery against a family or household member who had committed a prior malicious wounding against a family or household member cannot be identified.

Based on fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 357 offenders were convicted under the felony provisions §18.2-57.2 (B) for a third or subsequent assault against a family or household member. 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.

Of the total 357 felony offenders, only 6 (1.7%) were found to have a prior conviction for malicious wounding under §§ 18.2-51, 18.2-51.2 or 18.2-52, and none had two such convictions.

Based on FY2000 and FY2001 PSI data, there were 682 convictions for a malicious wounding under §§ 18.2-51, 18.2-51.2 or 18.2-52 in which the relationship between offender and victim was known. Of these, 88 (12.5%) of the victims were members of the offender's family.

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. Although 12.5% of the convictions under §§ 18.2-51, 18.2-51.2 and 18.2-52 for a malicious wounding involved a family member, the number of persons who would qualify for the Class 6 felony under the proposal is not known. Therefore, the impact on state-responsible (prison) and local-responsible (jail) beds cannot be determined.

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 sentences for offenders convicted under the statute as it is currently written. Empirical research has shown a strong relationship between an offender's criminal history and sentence length.

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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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