

## Department of Planning and Budget

### 2007 Fiscal Impact Statement

**1. Bill Number** HB 2736

<b>House of Origin</b>	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron** Englin

**3. Committee** House Courts of Justice

**4. Title** Assault against a family member

**5. Summary/Purpose:**

Assault and battery of a family or household member is a Class 1 misdemeanor. A third or subsequent offense is a Class 6 felony. However, a person charged with a first offense may be placed on probation under a deferred finding and, if he successfully fulfills the terms and conditions of his probation, the charge against him will be dismissed. A deferred finding of guilt under this provision is currently treated as a prior conviction only for the purposes of the statute regarding the carrying of a concealed weapon.

The proposed legislation would require that any deferral and subsequent dismissal of charges of assault and battery against a family or household member be counted as a conviction for the purpose of the requirement that a third conviction of that offense be a Class 6 felony.

**6. Fiscal Impact:** Preliminary. See Item 8.

**7. Budget amendment necessary:** No.

**8. Fiscal implications:**

The Virginia Criminal Sentencing Commission was unable to determine the impact of this proposal on state-responsible (prison) bed space pursuant to §30-19.1:4 of the Code of Virginia because the proposal would criminalize behavior that is not currently defined as a criminal act, and data on such activity does not exist. Consequently, the number of individuals who could be affected by the proposal is unknown.

Although there is insufficient data to project the impact on prison and jail beds of the proposed legislation, it could be significant because of the large number of offenders who are convicted of assault and battery against a family or household member. In 2004 and 2005, there were 4,983 offenders held in jail who had been convicted of a misdemeanor charge of assault of a family member. Of this number, 422 had a prior conviction of this offense. There is no data on how many of those 422 had a first offense deferred and subsequently dismissed. During those same two years, there were 377 convictions for a third or subsequent offense.

In effect, under current law, offenders who repeatedly assault and batter family members could have three chances before they can be charged with a felony—the first offense, which can be deferred and dismissed, and then two subsequent misdemeanor convictions. Under the proposed legislation, the number of convictions before the offense becomes a felony is reduced to two—the deferred and dismissed first charge and a subsequent misdemeanor conviction. Although it cannot be determined how many of those 422 with prior offenses convicted in 2004 and 2005 could have been convicted of a felony under the proposed legislation, based on the number of felony convictions (377) during that period, it is reasonable to project that a significant portion would have qualified.

Because the number of offenders convicted of assault and battery against a family or household member is large and because almost thirty percent of those convicted of a felony charge of this offense received a prison sentence in recent years, the proposed legislation could well result in a significant number of additional inmates in prison.

**9. Specific agency or political subdivisions affected:**

Department of Corrections

**10. Technical amendment necessary:** None.

**11. Other comments:** None.

**Date:** 01/28/2007 / rwh

**Document:** g:\legis\fis-07\hb2736.doc