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## HOUSE BILL NO. 2489

Offered January 14, 2009

A BILL to amend and reenact § 18.2-57.2, 19.2-151, and 37.2-506 of the Code of Virginia, relating to assault and battery against a family or household member; protective order; penalty.

Patrons—McClellan and Pollard

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 18.2-57.2, 19.2-151, and 37.2-506 of the Code of Virginia is amended and reenacted as follows:**

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

A. Any person who commits an assault and battery against (i) a family or household member, or (ii) an individual who is protected by a protective order that was issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1, where the protective order was issued against the person who commits the assault and battery, is guilty of a Class 1 misdemeanor.

B. Upon a conviction for assault and battery against a family or household member pursuant to subsection A, where it is alleged in the warrant, information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses against a family or household member person listed in subsection A of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding in violation of § 18.2-51, (iii) aggravated malicious wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, or (v) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person 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.

§ 19.2-151. Satisfaction and discharge of assault and similar charges.

When a person is in jail or under a recognizance to answer a charge of assault and battery or other misdemeanor, or has been indicted for an assault and battery or other misdemeanor for which there is a remedy by civil action, unless the offense was committed (i) by or upon any law-enforcement officer, (ii) riotously in violation of §§ 18.2-404 to 18.2-407, (iii) against a family or household member in violation of § 18.2-57.2, or (iv) with intent to commit a felony, if the person injured appears before the court which made the commitment or took the recognizance, or before the court in which the indictment is pending, and acknowledges in writing that he has received satisfaction for the injury, the court may, in its discretion, by an order, supersede the commitment, discharge the recognizance, or dismiss the prosecution, upon payment by the defendant of costs accrued to the Commonwealth or any of its officers.

§ 37.2-506. Background checks required.

A. As used in this section, the term "direct consumer care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of a consumer or (ii) immediately supervising a person in a position with this responsibility.

As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same community services board or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

B. Every community services board shall require any applicant who accepts employment in any direct consumer care position with the community services board to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the

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59 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record  
60 information regarding the applicant. Except as otherwise provided in subsections C or E, no community  
61 services board shall hire for compensated employment persons who have been convicted of any offense  
62 listed in subsection B of § 37.2-314.

63 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no  
64 record exists, shall submit a report to the requesting executive director or personnel director of the  
65 community services board. If any applicant is denied employment because of information appearing on  
66 the criminal history record and the applicant disputes the information upon which the denial was based,  
67 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the  
68 procedures for obtaining a copy of the criminal history record from the FBI. The information provided  
69 to the executive director or personnel director of any community services board shall not be  
70 disseminated except as provided in this section.

71 C. Notwithstanding the provisions of subsection B, the community services board may hire for  
72 compensated employment at adult substance abuse or adult mental health treatment programs a person  
73 who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56;  
74 (ii) reckless handling of a firearm, as set out in § 18.2-56.1; (iii) assault and battery, as set out in  
75 subsection A of § 18.2-57; or (iv) assault and battery ~~against a family or household member~~, as set out  
76 in subsection A of § 18.2-57.2; or any misdemeanor or felony violation related to (a) reckless  
77 endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60;  
78 (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in  
79 § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating  
80 to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except  
81 an offense pursuant to subsections H 1 or H 2 of § 18.2-248; or an equivalent offense in another state, if  
82 the hiring community services board determines, based upon a screening assessment, that the criminal  
83 behavior was substantially related to the applicant's substance abuse or mental illness and that the person  
84 has been successfully rehabilitated and is not a risk to consumers based on his criminal history  
85 background and his substance abuse or mental illness history.

86 D. The community services board and a screening contractor designated by the Department shall  
87 screen applicants who meet the criteria set forth in subsection C to assess whether the applicants have  
88 been rehabilitated successfully and are not a risk to consumers based on their criminal history  
89 backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the  
90 applicant shall have completed all prison or jail terms, shall not be under probation or parole  
91 supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court  
92 costs for any prior convictions, and shall have been free of parole or probation for at least five years for  
93 all convictions. In addition to any supplementary information the community services board or screening  
94 contractor may require or the applicant may wish to present, the applicant shall provide to the screening  
95 contractor a statement from his most recent probation or parole officer, if any, outlining his period of  
96 supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony  
97 conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the  
98 cost.

99 E. Notwithstanding the provisions of subsection B, a community services board may hire for  
100 compensated employment persons who have been convicted of not more than one misdemeanor offense  
101 under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person  
102 committed the offense while employed in a direct consumer care position.

103 F. Community services boards also shall require, as a condition of employment for all applicants,  
104 written consent and personal information necessary to obtain a search of the registry of founded  
105 complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant  
106 to § 63.2-1515.

107 G. The cost of obtaining the criminal history record and search of the child abuse and neglect  
108 registry record shall be borne by the applicant, unless the community services board decides to pay the  
109 cost.

110 H. A person who complies in good faith with the provisions of this section shall not be liable for  
111 any civil damages for any act or omission in the performance of duties under this section unless the act  
112 or omission was the result of gross negligence or willful misconduct.

113 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
114 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**  
115 **\$200,513 for periods of imprisonment in state adult correctional facilities and cannot be**  
116 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**