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## SENATE BILL NO. 459

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact § 18.2-57.2 of the Code of Virginia, relating to assault and battery of a family member by strangulation; penalty.*

Patron—Herring

Referred to Committee for Courts of Justice

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

**1. That § 18.2-57.2 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 a family or household member *in violation of this subsection* is guilty of a Class 1 misdemeanor *except that where it is alleged in the warrant, petition, information, or indictment on which a person is convicted that such person strangled the family or household member, he is guilty of a Class 6 felony.*

B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, petition, 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 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,~~ any violation of § 18.2-51, 18.2-51.2, or 18.2-52, or ~~(v)~~ (iii) 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 *in violation of this subsection* is guilty of a Class 6 felony *except that where it is additionally alleged in the warrant, petition, information, or indictment on which a person is convicted, that such person strangled the family or household member, he is guilty of a Class 5 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~~ *For purposes of this section:*

~~"family"~~ *Family or household member" shall have the same meaning as set forth in § 16.1-228 applies to this section.*

*"Strangle" means to impede the blood circulation or respiration of a person by knowingly and intentionally (i) applying pressure to the neck or (ii) obstructing the nose, mouth, or breathing passages of such person.*

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. 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; therefore, Chapter 890 of the Acts of Assembly of 2011 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

INTRODUCED

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