



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 459

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Herring)

LD#: 12104665

Date: 01/27/2012

Topic: Strangulation of another

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-51.6, relating to the strangulation of another, to the *Code of Virginia*. Under the proposal, a person who impedes the blood circulation or respiration of another by willfully, knowingly, intentionally, and without consent applying pressure to the neck of another person, resulting in wounding or bodily injury, is guilty of a Class 6 felony. The proposal permits as an affirmative defense that the defendant performed the act for a valid medical or dental purpose.

Under § 18.2-57(A), simple assault or assault and battery of a person who is not a law enforcement officer, correctional officer, firefighter, etc., is a Class 1 misdemeanor. Pursuant to § 18.2-51, maliciously shooting, stabbing, cutting, or wounding any person or by any means causing bodily injury with the intent to maim, disfigure, disable, or kill the person is a Class 3 felony. If the act is accomplished unlawfully but not maliciously, with the intent to maim, disfigure, etc., the offender is guilty of a Class 6 felony. Under § 18.2-57.2, an assault of a family or household member is a Class 6 felony if it is alleged in the warrant, information, or indictment that the offender has been previously convicted of two assaults against a family or household member. Otherwise, assault of a family or household member is a Class 1 misdemeanor.

Analysis:

The proposed offense would have the same penalty structure as the existing crime of unlawful wounding, defined in § 18.2-51. According to Sentencing Guidelines data for fiscal years 2010 and 2011, 1,009 offenders were convicted of a Class 6 felony under § 18.2-51 for unlawful wounding. The assault was the primary, or most serious, offense in 873 of the cases. While 23.3% of these offenders did not receive an active term of incarceration to serve after sentencing, 39.2% were sentenced to a local-responsible (jail) term, with a median sentence length of six months. The remaining 37.6% of offenders received a state-responsible (prison) term, for which the median sentence was approximately 1.6 years.

Existing databases do not provide sufficient detail to determine the number of assaults that involve strangulation.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates a new felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. The magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. The proposal may increase the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. As a new felony in the *Code of Virginia*, the sentencing guidelines would not cover violations of the proposed § 18.2-51.6. However, convictions for this crime may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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 2011 Acts of Assembly 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.

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