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HOUSE BILL NO. 765

Offered January 13, 2016

Prefiled January 12, 2016

A BILL to amend and reenact § 18.2-57.3 of the Code of Virginia, relating to first offense assault and battery against a family or household member; enhanced penalties.

Patrons—Gilbert, Fowler, Miyares and Murphy

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-57.3 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-57.3. Persons charged with first offense of assault and battery against a family or household member may be placed on local community-based probation; conditions; education and treatment programs; costs and fees; violations; discharge.

A. When a person is charged with a violation of § 18.2-57.2, the court may defer the proceedings against such person, without a finding of guilt, and place him on probation under the terms of this section.

B. For a person to be eligible for such deferral, the court shall find that (i) the person was an adult at the time of the commission of the offense, (ii) the person has not previously been convicted of any offense under this article or under any statute of the United States or of any state or any ordinance of any local government relating to assault and battery against a family or household member, (iii) the person has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, (iv) the person pleads guilty to, or enters a plea of not guilty or nolo contendere and the court finds the evidence is sufficient to find the person guilty of, a violation of § 18.2-57.2, and (v) the person consents to such deferral.

C. The court may (i) where a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 is available, order that the eligible person be placed with such agency and require, as a condition of local community-based probation, the person to successfully complete all treatment, education programs or services, or any combination thereof indicated by an assessment or evaluation obtained by the local community-based probation services agency if such assessment, treatment or education services are available; or (ii) require successful completion of treatment, education programs or services, or any combination thereof, such as, in the opinion of the court, may be best suited to the needs of the person.

D. The court shall require the person entering such education or treatment program or services under the provisions of this section to pay all or part of the costs of the program or services, including the costs of any assessment, evaluation, testing, education and treatment, based upon the person's ability to pay. Such programs or services shall offer a sliding-scale fee structure or other mechanism to assist participants who are unable to pay the full costs of the required programs or services.

The court shall order the person to be of good behavior for a total period of not less than two years following the deferral of proceedings, including the period of supervised probation, if available.

The court shall, unless done at arrest, order the person to report to the original arresting law-enforcement agency to submit to fingerprinting.

E. Upon fulfillment of the terms and conditions specified in the court order, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings; *however, such discharge and dismissal shall be treated as a conviction for the purposes of subsection B of § 18.2-57.2 and subsection B of § 18.2-60.3.* No charges dismissed pursuant to this section shall be eligible for expungement under § 19.2-392.2.

F. Upon violation of a term or condition of supervised probation or of the period of good behavior, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

G. Notwithstanding any other provision of this section, whenever a court places a person on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7.

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 665 of the Acts of Assembly of 2015 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

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59 necessary appropriation is \$0 for periods of commitment to the custody of the Department of
60 Juvenile Justice.