



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 661 **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Murphy)**

LD#: 18107909

Date: 3/2/2018

Topic: Assault and battery of a family or household member

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$15,536,402 (461 beds)
- **Local Adult Correctional Facilities:**
\$2,197,775 (174 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined*
- **Juvenile Detention Facilities:**
Cannot be determined*

*Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends § 18.2-57.2, relating to assault and battery against a family or household member. Currently, under § 18.2-57.2(A), this offense is punishable as a Class 1 misdemeanor. However, under § 18.2-57.2(B), the penalty for assault and battery of a family or household member is elevated to a Class 6 felony if it is alleged in the warrant, petition, information or indictment that the offender has been previously convicted of two specified offenses against a family or household member.

The proposal would increase the penalty for an assault and battery against a family or household member to a Class 6 felony if it is alleged that the offender has been previously convicted of a single specified offense against a family or household member. Thus, the proposal would expand the circumstances under which the enhanced penalty for this offense would apply. Penalties prescribed in § 18.2-57.2 would remain the same.

Analysis:

According to fiscal year (FY) 2016 and FY2017 Sentencing Guidelines data, 433 offenders were convicted of a Class 6 felony under § 18.2-57.2 for a third or subsequent assault and battery against a family or household member. This offense was the primary, or most serious, offense in 380 cases. Of these, 16.1% did not receive an active term of incarceration to serve after sentencing. Another 52.4% were given a local-responsible (jail) term, with a median sentence of seven months. The remaining 31.5% received a state-responsible (prison) term, for which the median sentence was 1.7 years.

During FY2016 and FY2017, a total of 11,462 offenders were convicted of a Class 1 misdemeanor under § 18.2-57.2 (as the primary, or most serious, offense) in General District Court, Juvenile and Domestic Relations Court, or Circuit Court. Examining court data for FY2008 through FY2017 reveals that 1,591

of these offenders had one prior misdemeanor conviction for the same offense. If 18.2-57.2 were amended such that a second or subsequent offense was a Class 6 felony (rather than the third offense), the 1,591 would be eligible for felony prosecution. If these offenders were prosecuted for the felony and sentenced similarly to those currently convicted of a Class 6 felony under § 18.2-57.2(B) for a third or subsequent assault against a family or household member, nearly one-third (32%) would receive a state-responsible (prison) term with a median sentence of 1.7 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the circumstances under which an existing felony would apply, the proposal is expected to have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 461 beds statewide by FY2024. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$15,536,402.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY19	FY20	FY21	FY22	FY23	FY24
193	356	421	444	455	461

Local adult correctional facilities. The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be 174 beds by FY2024 (state costs: \$2,197,775; local costs: \$3,148,579).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY19	FY20	FY21	FY22	FY23	FY24
143	163	167	170	172	174

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal is expected to increase the need for state community corrections resources to accommodate the additional felony offenders.

Virginia's sentencing guidelines. The sentencing guidelines cover felony violations of § 18.2-57.2. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or an alternative commitment placement) 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 is \$15,536,402 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2017.

2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2017.
3. Cost per prison bed was assumed to be \$33,707 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2016 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$34.58 per day or \$12,630 per year. The local cost was calculated by using the daily expenditure cost of \$86.79 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$49.54 per day or \$18,094 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to offenders

1. It was assumed that prosecutors would charge all eligible offenders with a Class 6 felony as proposed.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2018, is phased in to account for case processing time.
2. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted of a Class 6 felony under § 18.2-57.2(B).
3. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2016. For assaults, this rate was 8.6%.

Limitations

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria.

aslfam05_7909