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## HOUSE BILL NO. 2042

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor  
on March 26, 2019)

(Patron Prior to Substitute—Delegate Murphy)

A BILL to amend and reenact §§ 18.2-57.2 and 19.2-120 of the Code of Virginia, relating to assault and battery against a family or household member; prior conviction; term of confinement.

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

1. That §§ 18.2-57.2 and 19.2-120 of the Code of Virginia are 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 is guilty of a Class 1 misdemeanor.

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 an offense 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 or unlawful 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, (v) strangulation in violation of § 18.2-51.6, or (vi) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, and that occurred within a period of five years of the instant offense, such person is guilty of a Class 1 misdemeanor and the sentence of such person shall include a term of confinement of at least 60 days.

C. 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 or unlawful 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, (v) strangulation in violation of § 18.2-51.6, or (vi) 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.~~ D. 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.~~ E. The definition of "family or household member" in § 16.1-228 applies to this section.

§ 19.2-120. Admission to bail.

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or

2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;

2. An offense for which the maximum sentence is life imprisonment or death;

3. A violation of § 18.2-248, 18.2-248.01, 18.2-255, or 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;

4. A violation of § 18.2-308.1, 18.2-308.2, or 18.2-308.4 and which relates to a firearm and provides for a mandatory minimum sentence;

5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of the Commonwealth or substantially similar laws of the United States;

6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or

60 conviction;

61 7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted  
62 of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the  
63 United States and the judicial officer finds probable cause to believe that the person who is currently  
64 charged with one of these offenses committed the offense charged;

65 8. A violation of § 18.2-374.1 or 18.2-374.3 where the offender has reason to believe that the  
66 solicited person is under 15 years of age and the offender is at least five years older than the solicited  
67 person;

68 9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5, or 18.2-46.7;

69 10. A violation of § 18.2-36.1, 18.2-51.4, 18.2-266, or 46.2-341.24 and the person has, within the  
70 past five years of the instant offense, been convicted three times on different dates of a violation of any  
71 combination of these Code sections, or any ordinance of any county, city, or town or the laws of any  
72 other state or of the United States substantially similar thereto, and has been at liberty between each  
73 conviction;

74 11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4 or a substantially similar offense  
75 under the laws of any state or the United States;

76 12. A violation of subsection B of § 18.2-57.2;

77 13. A violation of subsection C of § 18.2-460 charging the use of threats of bodily harm or force to  
78 knowingly attempt to intimidate or impede a witness;

79 14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in  
80 § 16.1-228; or

81 15. A violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1.

82 C. The judicial officer shall presume, subject to rebuttal, that no condition or combination of  
83 conditions will reasonably assure the appearance of the person or the safety of the public if the person is  
84 being arrested pursuant to § 19.2-81.6.

85 D. A judicial officer who is a magistrate, clerk, or deputy clerk of a district court or circuit court  
86 may not admit to bail, that is not set by a judge, any person who is charged with an offense giving rise  
87 to a rebuttable presumption against bail as set out in subsection B or C without the concurrence of an  
88 attorney for the Commonwealth. For a person who is charged with an offense giving rise to a rebuttable  
89 presumption against bail, any judge may set or admit such person to bail in accordance with this section  
90 after notice and an opportunity to be heard has been provided to the attorney for the Commonwealth.

91 E. The court shall consider the following factors and such others as it deems appropriate in  
92 determining, for the purpose of rebuttal of the presumption against bail described in subsection B,  
93 whether there are conditions of release that will reasonably assure the appearance of the person as  
94 required and the safety of the public:

95 1. The nature and circumstances of the offense charged;

96 2. The history and characteristics of the person, including his character, physical and mental  
97 condition, family ties, employment, financial resources, length of residence in the community,  
98 community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in  
99 a criminal street gang as defined in § 18.2-46.1, and record concerning appearance at court proceedings;  
100 and

101 3. The nature and seriousness of the danger to any person or the community that would be posed by  
102 the person's release.

103 F. The judicial officer shall inform the person of his right to appeal from the order denying bail or  
104 fixing terms of bond or recognizance consistent with § 19.2-124.

105 G. If the judicial officer sets a secured bond and the person engages the services of a licensed bail  
106 bondsman, the magistrate executing recognizance for the accused shall provide the bondsman, upon  
107 request, with a copy of the person's Virginia criminal history record, if readily available, to be used by  
108 the bondsman only to determine appropriate reporting requirements to impose upon the accused upon his  
109 release. The bondsman shall pay a \$15 fee payable to the state treasury to be credited to the Literary  
110 Fund, upon requesting the defendant's Virginia criminal history record issued pursuant to § 19.2-389.  
111 The bondsman shall review the record on the premises and promptly return the record to the magistrate  
112 after reviewing it.