

19105306D

SENATE BILL NO. 1230

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 21, 2019)

(Patron Prior to Substitute—Senator Ebbin)

A BILL to amend and reenact §§ 18.2-57.2, 18.2-60.3, 19.2-81.3, and 19.2-120 of the Code of Virginia, relating to assault and battery against a family member; definition of family or household member.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-57.2, 18.2-60.3, 19.2-81.3, 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 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. 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 "family or household member" in § 16.1-228 applies to this section~~ *As used in this section, unless the context requires a different meaning:*

"Dating relationship" means frequent and intimate associations primarily characterized by an expectation of affection or sexual involvement independent of financial considerations.

"Family or household member" means (i) the person's spouse, whether or not he resides in the same home with the person; (ii) the person's former spouse, whether or not he resides in the same home with the person; (iii) the person's parents, stepparents, children, stepchildren, siblings, half-siblings, grandparents, and grandchildren, regardless of whether such persons reside in the same home with the person; (iv) the person's parents-in-law, children-in-law, siblings-in-law, aunts, aunts-in-law, step-aunts, uncles, uncles-in-law, step-uncles, nieces, nephews, and first and second cousins who reside in the same home with the person; (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time; (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person; or (vii) any individual who is in, or has been in, a dating relationship with the person.

§ 18.2-60.3. Stalking; penalty.

A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor. If the person contacts or follows or attempts to contact or follow the person at whom the conduct is directed after being given actual notice that the person does not want to be contacted or followed, such actions shall be prima facie evidence that the person intended to place that other person, or reasonably should have known that the other person was placed, in reasonable fear of death, criminal sexual assault, or bodily injury to himself or a family or household member.

B. Any person who is convicted of a second offense of subsection A occurring within five years of a prior conviction of such an offense under this section or for a substantially similar offense under the law of any other jurisdiction is guilty of a Class 6 felony.

C. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person

engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.

D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least 15 days prior to release of a person sentenced to a term of incarceration of more than 30 days or, if the person was sentenced to a term of incarceration of at least 48 hours but no more than 30 days, 24 hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

F. For purposes of this section:

"Family or household member" has the same meaning as provided in § ~~16.1-228~~ 18.2-57.2.

§ 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or household member and stalking and for violations of protective orders; procedure, etc.

A. Any law-enforcement officer with the powers of arrest may arrest without a warrant for an alleged violation of § 18.2-57.2, 18.2-60.4, or 16.1-253.2 regardless of whether such violation was committed in his presence, if such arrest is based on probable cause or upon personal observations or the reasonable complaint of a person who observed the alleged offense or upon personal investigation.

B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or 16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest. The standards for determining who is the predominant physical aggressor shall be based on the following considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of family and household members, (iii) prior complaints of family abuse by the allegedly abusing person involving the family or household members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

C. A law-enforcement officer having probable cause to believe that a violation of § 18.2-60.4 has occurred that involves physical aggression shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest. The standards for determining who is the predominant physical aggressor shall be based on the following considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of the person to whom the protective order was issued and the person's family and household members, (iii) prior acts of violence, force, or threat, as defined in § 19.2-152.7:1, by the person against whom the protective order was issued against the person protected by the order or the protected person's family or household members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

D. Regardless of whether an arrest is made, the officer shall file a written report with his department, which shall state whether any arrests were made, and if so, the number of arrests, specifically including any incident in which he has probable cause to believe family abuse has occurred, and, where required, including a complete statement in writing that there are special circumstances that would dictate a course of action other than an arrest. The officer shall provide the allegedly abused person or the person protected by an order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person or person protected by the order. Upon request of the allegedly abused person or person protected by the order, the department shall make a summary of the report available to the allegedly abused person or person protected by the order.

E. In every case in which a law-enforcement officer makes an arrest under this section for a violation of § 18.2-57.2, he shall petition for an emergency protective order as authorized in § 16.1-253.4 when the person arrested and taken into custody is brought before the magistrate, except if the person arrested is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement officer shall seek an emergency protective order under § 16.1-253.4, except if the suspected abuser is a minor, a petition for an emergency protective order shall not be required.

F. A law-enforcement officer investigating any complaint of family abuse, including but not limited to assault and battery against a family or household member shall, upon request, transport, or arrange for the transportation of an abused person to a hospital or safe shelter, or to appear before a magistrate. Any local law-enforcement agency may adopt a policy requiring an officer to transport or arrange for transportation of an abused person as provided in this subsection.

G. The definition of "family or household member" in § ~~16.1-228~~ 18.2-57.2 applies to this section.

H. As used in this section, "law-enforcement officer" means (i) any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, and any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth; (ii) any member of an auxiliary police force established pursuant to § 15.2-1731; and (iii) any special conservator of the peace who meets the certification requirements for a law-enforcement officer as set forth in § 15.2-1706. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

§ 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 conviction;
7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;
8. A violation of § 18.2-374.1 or 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person;
9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5, or 18.2-46.7;
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 past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction;
11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4 or a substantially similar offense under the laws of any state or the United States;

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

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

186 14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in §
187 46.1-228 18.2-57.2; or

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

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

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

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

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

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

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

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

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

220 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
221 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
222 **necessary appropriation is _____ for periods of imprisonment in state adult correctional**
223 **facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I, requires the**
224 **Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant**
225 **to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is**
226 **_____ for periods of commitment to the custody of the Department of Juvenile Justice.**