



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1621 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Obenshain)

LD#: 19104944

Date: 1/28/2019

Topic: Assault and battery of a family or household member

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$14,978,224 (427 beds)
- **Local Adult Correctional Facilities:**  
\$1,939,012 (157 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 any two of the 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 felony penalty for this offense would apply.

#### Analysis:

According to fiscal year (FY) 2017 and FY2018 Sentencing Guidelines data, 451 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 387 cases. Of these, approximately half (49.1%) were given a local-responsible (jail) term with a median sentence of seven months. Another 16.5% did not receive an active term of incarceration to serve after sentencing. The remaining 34.4% received a state-responsible (prison) term for which the median sentence was 1.5 years.

During FY2017 and FY2018, a total of 11,149 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 FY2009 through FY2018 reveals that 1,513 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 1,513 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, about one-third (34.4%) would receive a state-responsible (prison) term with a median sentence of 1.5 years.

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**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 427 beds statewide by FY2025. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$14,978,224.

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

FY20	FY21	FY22	FY23	FY24	FY25
186	342	401	419	426	427

**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 157 beds by FY2025 (state costs: \$1,939,012; local costs: \$2,838,999).

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

FY20	FY21	FY22	FY23	FY24	FY25
135	153	155	156	156	157

**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.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$14,978,224 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 2018.
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 2018.
3. Cost per prison bed was assumed to be \$35,053 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 FY2017 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$33.83 per day or \$12,356 per year. The local cost was calculated by using the daily expenditure cost of \$85.98 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 \$49.53 per day or \$18,091 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, 2019, 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, 2017. For assaults, this rate was 8.3%.

**Limitations**

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

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