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HOUSE BILL NO. 4030

Offered July 9, 2019

Prefiled July 9, 2019

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; mandatory minimum term of confinement; penalty.

Patron—Gilbert

Referred to Committee for Courts of Justice

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 that occurred within a period of 10 years of the instant 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 that has the same elements of any of the above offenses is guilty of a Class 1 misdemeanor and the sentence of such person shall include a mandatory minimum term of confinement of 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.

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.

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;

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

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

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

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

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

72 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
73 past five years of the instant offense, been convicted three times on different dates of a violation of any
74 combination of these Code sections, or any ordinance of any county, city, or town or the laws of any
75 other state or of the United States substantially similar thereto, and has been at liberty between each
76 conviction;

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

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

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

82 14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in
83 § 16.1-228; or

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

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

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

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

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

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

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

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

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

116 2. That the provisions of this act may result in a net increase in periods of imprisonment or
117 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the
118 necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities.
119 Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary
120 appropriation is cannot be determined for periods of commitment to the custody of the

121 Department of Juvenile Justice.