



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 488

(Patron – Suit)

Date Submitted: 01/08/02

LD #: 02-5263253

Topic: Domestic violence

Proposed Change:

The proposed legislation would amend the definition of family abuse in §16.1-228 to include acts that place a person in fear of imminent physical harm, threats of force or duress to cause another to engage involuntarily in sexual conduct, unlawful or forcible entry of a residence, interference with personal liberty, willful harassment, or the threat of any of these acts. The proposal would establish a state coordinator for victims of domestic violence within the Office of the Secretary of Public Safety (§2.2-223.1) and would require the Department of State Police to establish and maintain a Protective Order Registry as a central repository of information on outstanding, valid protective orders (§§19.2-387.1 and 52-45). The proposal specifies that court clerks must “immediately upon receipt” forward copies of protective orders and stalking protective orders to the local law enforcement office (§§16.1-279.1 and 19.2-152.10), and it directs law enforcement agencies “upon receipt” of a protective order (including preliminary and emergency protective orders and those issued in stalking cases) to enter the name and other required information for the person subject to the order into the Virginia Criminal Information Network maintained by the State Police (§§16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, and 19.2-152.10).

Regarding the suspension or tolling of the statute of limitations for torts, the proposed legislation specifies that the time during which a married couple lived together shall not be counted as part of the period within which a legal action must be brought (§8.01-229). Revisions to §19.2-11.2 would ensure the victim’s right to confidentiality without a specific request from the victim, while changes to §19.2-11.01 would require Commonwealth’s Attorneys, if practicable, to verify that a victim received the standardized form listing the rights afforded crime victims. This section would also require that a victim be advised that his or her contact information shall be kept confidential. The proposal establishes a rebuttable presumption that it is not in the best interests of a child for a parent, previously convicted of child abuse or neglect or contributing to the delinquency of a minor, to be awarded custody (§20-124.2). Under the proposed language, a law-enforcement officer must provide the allegedly abused person information regarding the legal and community resources available whether or not such information is requested, and, when requested, the law-enforcement officer must arrange transportation of an abused person to a hospital, shelter or magistrate (§19.2-83.1). The proposal would also expand the state’s witness protection program to include cases involving certain felony domestic violence offenses and certain sex offenses (§52-35).

Revisions to §9.1-102 would direct the Department of Criminal Justice Services to establish training standards and publish a model policy for law-enforcement personnel for handling domestic violence cases. Changes to §19.2-305.1 would require the court to order that any restitution be paid to the court clerk, who shall distribute the funds to crime victims.

The proposed legislation contains enactment clauses that direct the Virginia Supreme Court to establish judicial training regarding domestic violence and the Commonwealth's Attorneys Services Council to provide training to Commonwealth's attorneys related to the prosecution of domestic violence cases.

Several crimes are also affected by the proposal. The following table summarizes the proposed changes to the criminal code.

Statute and description of crime	Description of proposed change(s)
§18.2-57.2 Assault and battery of a family or household member	1. Mandatory fine of at least \$250 2. Committing the offense while possessing a firearm with intent to intimidate would be punishable as Class 6 felony with mandatory fine of at least \$500 3. Second or subsequent conviction would be punishable as a Class 6 felony with mandatory minimum sentence of 30 days 4. Committing the offense in violation of an outstanding, valid protective order would be punishable as a Class 6 felony
§18.2-57.2 Assault and battery of a family or household member in the presence of a child	Punishable as a Class 1 misdemeanor with a mandatory fine of at least \$250, and a mandatory minimum sentence of 15 days
§18.2-60.3 Stalking	1. Mandatory fine of at least \$250 2. Committing the offense while possessing a firearm with intent to intimidate would be punishable as Class 6 felony with mandatory fine of at least \$500 3. Second or subsequent conviction would be punishable as a Class 6 felony
§18.2-61 Rape	Removes the requirement that married persons must be living apart or that the defendant caused bodily injury by use of force for a spouse to be convicted of rape
§18.2-67.5:1 3rd conviction for a misdemeanor sexual assault	Second or subsequent conviction is punishable as a Class 6 felony with a mandatory minimum sentence of 30 days
§18.2-164 Unlawful use of, or injury to, telephone and telegraph lines, or copying or obstructing messages	Penalty increased from a Class 3 to a Class 1 misdemeanor
§18.2-460 Obstructing justice	1. Penalty for knowingly obstructing justice increased from a Class 2 to a Class 1 misdemeanor 2. Penalty for knowingly attempting to intimidate or impede justice by force or threats increased from a Class 1 misdemeanor to a Class 6 felony

Current Practice:

Currently, under §18.2-57.2, assault and battery of a family or household member is a Class 1 misdemeanor, while a third or subsequent conviction is a Class 6 felony. There are no special provisions attached to a violation involving the possession of a firearm with intent to intimidate, the presence of a child, or the existence of a valid protective order, nor are there mandatory minimum fines or sentences. According to the Local Inmate Data System (LIDS) data, during fiscal year (FY) 2001, 377 offenders held pre- or post-trial in jail were convicted for violation of §18.2-57.2 for a misdemeanor assault of a family or household member with a prior conviction. Information on this crime is limited because the LIDS database started to capture specific *Code of Virginia* information beginning January 1, 2000, and the Pre/Post-Sentence Investigation (PSI) database rarely contains information on misdemeanors that are not accompanied by a felony conviction. Nearly all (92%) of the offenders convicted under this statute received a local-responsible (jail) term, with a median sentence of 1.3 months (see *Background Sentencing Information* below). There were also 102 convictions where the offender had also been arrested for violating a protective order within the previous six months of the misdemeanor assault. Nearly all (92%) were sentenced to a jail term, with a median sentence of 1.8 months. Misdemeanor convictions are not covered by the sentencing guidelines as the primary or most serious offense, but may augment the sentence recommendation as additional offenses.

Stalking (§18.2-60.3) is punishable as a Class 1 misdemeanor, with a third or subsequent conviction punishable as a Class 6 felony. There are presently no special provisions for possessing a firearm with intent to intimidate nor any mandatory minimum fines. FY2001 LIDS data indicate that there were three convictions for misdemeanor stalking with a prior conviction (see *Background Sentencing Information* below). All three were sentenced to jail, with a median sentence of nine months.

There is currently an exception in §18.2-61 whereby a spouse cannot be found guilty of raping his or her marital partner unless the spouses were living separate and apart or the defendant caused bodily injury by the use of force. According to calendar year (CY) 1999 and 2000 Pre/Post-Sentence Investigation (PSI) database, there were 62 offenders convicted of rape where the victim was identified as being a family member (see *Background Sentencing Information* below). Of these, 84% were sentenced to a state-responsible (prison) term, with a median sentence of 20 years.

Under §18.2-67.5:1, a third or subsequent conviction for sexual battery, attempted sexual battery, consensual intercourse with a child, or indecent exposure is punishable as a Class 6 felony. Conviction under this statute does not currently carry a mandatory minimum term of incarceration. Based on FY2001 LIDS data, there were 33 offenders held pre- or post-trial in jail who were convicted of misdemeanor sexual battery or attempted sexual battery, while 99 were convicted of misdemeanor consensual intercourse with a child (indecent liberties), and were 82 convicted of misdemeanor indecent exposure or procuring another for indecent exposure where the offender had been previously convicted of the same crime (see *Background Sentencing Information* below). Most were sentenced to a jail term (sexual battery: 79%; indecent liberties: 91%; and indecent exposure: 96%); median sentences for these crimes were six months, two months, and two months, respectively.

Background Sentencing Information

Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
Second or subsequent assault on a family or household member (§18.2-57.2) [†]	377	6%	92%	2%	1.3 mo.
Assault on a family or household member with a valid protective order (§18.2-57.2) [†]	102	6%	92%	2%	1.8 mo.
Second or subsequent stalking (§18.2-60.3) [†]	3	0%	100%	0%	9 mo.
Second sexual battery or attempted sexual battery (§18.2-67.5:1)* [†]	33	0%	79%	21%	6 mo.
Second violation of §18.2-371 involving consensual intercourse with a child (§18.2-67.5:1)* [†]	99	8%	91%	1%	2 mo.
Second indecent exposure or procuring another in violation of §18.2-387 (§18.2-67.5:1)* [†]	82	0%	96%	4%	2 mo.
Obstruction of justice (§18.2-460A)	1454	7%	92%	1%	1 mo.
Use of threat or force to intimidate or impede administration of justice (§18.2-460B)	635	6%	93%	1%	1 mo.

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.
Data Source: FY2001 Local Inmate Data System (LIDS)

*Only second offense was examined because third or subsequent is already a Class 6 felony.

[†]FY2000 LIDS data was used to identify prior record (convictions or arrests as needed) to identify if an offender sentenced in FY2001 met the criteria for a prior conviction for the specified offense or a protective order in effect.

Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Rape involving a family member (§18.2-61)	62	11%	5%	84%	20 yr.
Assault on a family or household member with a valid protective order (§18.2-57.2)	102	6%	92%	2%	1.8 mo.

Data Source: CY1999 and CY2000 Pre/Post-Sentence Investigation (PSI) database

Currently, §18.2-164 describes several crimes that involve malicious or willful acts or aiding acts of interference with telephone or telegraph communication. These crimes are punishable as Class 3 misdemeanors. As fine only misdemeanors, LIDS will only have information if the offender was detained in jail for an accompanying jailable offense. No cases were found in the FY2001 LIDS database.

To knowingly obstruct justice or to refuse to cease such obstruction when requested, under §18.2-460, is punishable as a Class 2 misdemeanor. Under the same statute, to use threats or force to intimidate or impede the administration of justice is punishable as a Class 1 misdemeanor. According to FY2001 LIDS data, there were 1,454 offenders convicted of obstruction of justice and 635 were convicted of the more serious charge who were held pre- or post-trial in jail (see *Background Sentencing Information* above). More than nine in ten were sentenced to a jail term, with the median sentence length being one month for both offenses.

Impact of Proposed Legislation:

The proposed legislation creates a new crime, raises the penalty structure for several existing crimes, and adds mandatory minimums to several of the crimes. Historically, not all offenders eligible for conviction under mandatory minimum penalty statutes have been convicted under those statutes, often as the result of plea negotiations with the Commonwealth. The effect of the proposed mandatory minimum penalty on plea negotiations and the rate of conviction under these statutes cannot be determined. For this analysis, it was assumed that 100% of the offenders meeting the proposed eligibility criteria would be sentenced to the mandatory minimum term. However, not all of the crimes affected by this proposal could be assessed for a bed space impact, and thus a full impact cannot be determined. The crimes that could not be assessed were (1) assault and battery of a family or household member committed with the use of a firearm with intent to intimidate or committed in the presence of a child, (2) rape of a spouse living in the same residence with no physical injury of the victim, (3) stalking and use of a firearm with intent to intimidate, and (4) unlawful use, or injury to, telephone and telegraph lines, or copying or obstructing messages. Nonetheless, based on the crimes that could be examined, applying the sentences for similar crimes and the appropriate mandatory minimum sentences, this proposal would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, a conservative estimate of the net high state-responsible impact of this proposal would be 3,275 beds, or \$76,851,150. In addition, there will be an impact on local-responsible (jail) bed space; based on the same offenses, there will be a need for 200 fewer jail beds distributed across the state.

No adjustment to the sentencing guidelines would be necessary under the proposal.

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

FY03	FY04	FY05	FY06	FY07	FY08
557	1978	2730	2933	3094	3275

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

FY03	FY04	FY05	FY06	FY07	FY08
-113	-193	-200	-200	-200	-200

Pursuant to §30-19.1:4, the estimated amount of the necessary appropriation is at least \$76,851,150 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's Committee on Inmate Forecasting in 2001.
2. New cases representing local-responsible and no incarceration sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the PSI database.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2002, is phased in to account for case processing time.
2. 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, 2000. For violent offenses, this rate was 8.8%.
3. Two procedures were used to establish sentences for persons affected by the proposed legislation. First, as all of the examined offenses involved an increase in the penalty structure, sentences were randomly assigned from similar offenses with the appropriate penalty structure. The match of offenses to similar crimes was structured as follows: (a) assault and battery of a family or household member (both first with outstanding protective order and second or subsequent) with a third conviction for the same offense, (b) second or subsequent conviction of stalking with a third conviction for the same offense, (c) second or subsequent conviction of sexual battery or attempted sexual batter with a third conviction for the same offenses, (d) a second or subsequent conviction of consensual intercourse with a child with a third conviction for the same offense, (e) a second or subsequent conviction of indecent exposure or procuring another for indecent exposure with a third conviction for the same offense, (f) obstruction of justice with use of a threat or force to intimidate or impede the administration of justice, and (g) use of a threat or force to intimidate or impede the administration of justice with all Class 6 felony extortions. Second, for persons convicted of an offense that would be affected by a mandatory minimum, sentences were adjusted to be equal to the mandatory minimum as specified under the appropriate statute unless the effective sentence (imposed minus suspended time) already exceeded the proposed mandatory minimum.