



## Impact Analysis on Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 2489 (Patron – McClellan)

LD#: 09-8724624

Date: 1/20/2009

Topic: Assault and battery against individual under protective order

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$200,513 (7 beds)
- **Local Adult Correctional Facilities:**  
-\$10,136 (-1 bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined, likely small
- **Juvenile Detention Facilities:**  
Cannot be determined, likely small

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#### Summary of Proposed Legislation:

The proposal expands § 18.2-57.2, relating to assault and battery of a family or household member, to include assault and battery of a person who is covered by a protective order issued against the assailant. Assault and battery committed under these circumstances is already a Class 1 misdemeanor under § 18.2-57; however, adding it to § 18.2-57.2 means that the penalty for a third or subsequent conviction for this offense (or a combination of this offense and assault of a family or household member) would be punishable as a Class 6 felony.

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#### Analysis:

According to the CY2005 and CY2006 Local Inmate Data System (LIDS), there were 251 offenders convicted of a misdemeanor assault (excluding assault of a family or household member under the existing § 18.2-57.2(A)) with an accompanying conviction for violation of a protective order. The majority (88%) of these received a local-responsible (jail) term, for which the median sentence was more than three months. More than 8% of offenders convicted for a misdemeanor assault and violation of a protective order were given the maximum allowable jail term of 24 months. Under the proposal, a third or subsequent conviction for an assault committed under these circumstances (or in combination with convictions for assault of a family or household member) would become a Class 6 felony.

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#### Impact of Proposed Legislation:

**State adult correctional facilities.** Because it expands and raises the penalty for assault and battery from a misdemeanor to a felony when the victim is covered by a protective order issued against the assailant and the crime qualifies as a third conviction under § 18.2-57.2(B), the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. If the proportion of misdemeanor to felony assaults of a family or household member is applied to other misdemeanor assaults that are accompanied by a protective order violation, the proposal is expected to produce 21 additional felony convictions a year by FY2015. In this way, the proposal will increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be seven beds by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the

necessary appropriation is \$200,513.

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

FY10	FY11	FY12	FY13	FY14	FY15
3	6	7	7	7	7

**Local adult correctional facilities.** The proposal is expected to decrease the need for local-responsible (jail) beds, as some offenders convicted of misdemeanors will, under the proposal, be convicted of felonies and be given prison sentences. The impact on local-responsible (jail) beds is estimated to be a decrease of one bed by FY2015 (state savings: \$10,136; local savings: \$10,468).

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

FY10	FY11	FY12	FY13	FY14	FY15
-1	-1	-1	-1	-1	-1

**Adult community corrections resources.** Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal.

**Virginia's sentencing guidelines.** As misdemeanors, convictions under §§ 18.2-57 and 18.2-57.2(A) are not covered by the sentencing guidelines as the primary (most serious) offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. The guidelines do cover the third or subsequent conviction for assault of a family or household member (§ 18.2-57.2(B)), a Class 6 felony. No adjustment to the sentencing guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal may increase juvenile correctional center (JCC) bed space needs. Although the number cannot be quantified, it is expected to be small.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal may increase the bed space needs of juvenile detention facilities by a small amount.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$200,513 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 2008.
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 July 2008.
3. Cost per prison bed was assumed to be \$27,294 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 FY2007 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.77 per day or \$10,509 per year. The local cost was calculated by using the daily expenditure cost of \$62.56 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 \$29.71 per day or \$10,853 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. Adding assault and battery committed in violation of a protective order to the misdemeanor provision of § 18.2-57.2 will not have any affect on the overall number of offenders convicted for misdemeanor assault, since such an assault currently can be prosecuted under the general assault statute (§ 18.2-57).
2. Adding assault and battery committed in violation of a protective order to the felony provision of § 18.2-57.2 will result in additional felony convictions for third or subsequent violations. The number of additional felony offenders was estimated based on the proportion of felony convictions to total convictions for assaulting a family or household member under the existing § 18.2-57.2. This proportion (8.4%) was applied to the 251 misdemeanants who were identified as having both a misdemeanor assault (other than family or household assault) and violation of a protective order in the same sentencing event. If the cases affected by the proposal result in felony convictions at the same rate as assaults of a family or household member under the existing law, the proposal is expected to produce approximately 10.5 additional felony convictions a year by FY2015.

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2009, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing provision for a third or subsequent conviction for assault of a family or household member 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, 2007. For assaults, this rate was 11.2%.

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