



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 935 (Patron – Bell)

LD#: 10102331

Date: 12/21/2009

Topic: Assault and battery against a family member in the presence of a minor

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-57.2 to create a new Class 6 felony if a person, 18 years or older, who maintains a custodial relationship over a child under the age of 18, knowingly allows that child to be present in the same dwelling, apartment, hotel unit, garage, shed or vehicle while an assault of a family or household member is committed.

Currently, under § 18.2-57.2, an assault or assault and battery against a family or household member is a Class 6 felony only if it is alleged in the warrant, information, or indictment that the offender has been previously convicted of two assaults of a family or household member in violation of §§ 18.2-57.2, 18.2-51, 18.2-51.2, 18.2-52, or a similar offense in another jurisdiction. Otherwise, assault of a family or household member is a Class 1 misdemeanor.

Analysis:

According to the CY2007 and CY2008 Local Inmate Data System (LIDS), there were 6,402 offenders held pre- or post-trial in jail who were convicted of a Class 1 misdemeanor under § 18.2-57.2 for assault or assault and battery of a family member or household member. For 6,163 of these offenders, the misdemeanor assault was the most serious offense at conviction. Of the 6,163, the majority (74%) received a local-responsible (jail) term, for which the median sentence was two months. Approximately 3% of offenders convicted for an assault of a family or household member under § 18.2-57.2(A) were given the maximum allowable jail term of 12 months.

Although the number of assaults of a family or household member committed in the presence of a person under the age of 18 is not known, researchers (Fantuzzo et al.¹ and Gjelsvik et al.²) have reported that

¹ Fantuzzo, John, Rachel Fusco, Wanda Mohr and Marlo Perry, 2007 "Domestic violence and children's presence: A population-based study of law enforcement surveillance of domestic violence," *Journal of Family Violence*, 22: 331-340.

nearly half of all domestic violence events are witnessed by children. However, it is unknown how often a child's parent or custodian knowingly allowed the child to witness those assaults.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates a new felony offense, the proposal may have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. The magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. The proposal may increase the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. The proposed Class 6 felony would not be covered by the sentencing guidelines as the primary (most serious) offense in a sentencing event. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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² Gjelsvik, A., W. Verhoek-Oftedahl and D. Pearlman, 2002 "Extent and correlates of children witnessing domestic violence: estimates from a statewide surveillance system," Academy of Health Services Research Policy Meeting, 19: 7.