



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 904 **(Patron – Deeds)**

LD#: 11100684

Date: 11/29/2010

Topic: Assault and battery against a family member

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:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 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 expand the list of offenses that may be counted as prior convictions for the purposes of enhancing the penalty for assault of a family or household member. Under the proposal, any previous conviction(s) for unlawful wounding in violation of § 18.2-51, or unlawful injury with a substance in violation of § 18.2-52, involving a family or household member could be counted as prior convictions in order to raise the penalty for a third conviction for assault of a family or household member from a Class 1 misdemeanor to a Class 6 felony.

Currently, under § 18.2-57.2, an assault of 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 involving a violation of: § 18.2-57.2 (simple assault against a family member), § 18.2-51 (malicious wounding), § 18.2-51.2 (aggravated malicious wounding), § 18.2-52 (malicious injury by means of a substance, or any similar offense in another jurisdiction. Otherwise, assault of a family or household member is a Class 1 misdemeanor.

Prior to July 1, 2004, prior felony assaults against a family or household member could not be used to enhance the penalty for a third or subsequent misdemeanor assault against a family or household member. Only prior misdemeanor family assaults could be counted as priors under this statute. The 2004 General Assembly added malicious and aggravated malicious wounding to the list of offenses that could be counted as prior convictions under § 18.2-57.2.

Analysis:

According to the FY2009 and FY2010 Local Inmate Data System (LIDS), there were 6,259 offenders held pre- or post-trial in jail who were convicted of a Class 1 misdemeanor under § 18.2-57.2 for

assaulting a family or household member. Another 589 offenders were held in jail and subsequently convicted of a Class 6 felony under this same provision for assaulting a family or household member.

- Of the 6,259 convicted of the Class 1 misdemeanor, the vast majority (93%) received a local-responsible (jail) term, for which the median sentence was two months.
- Of the 589 convicted of the Class 6 felony, approximately 94% were given some type of active incarceration to serve. The majority, 335, received a local-responsible (jail) term with a median sentence of seven months. Another 217 received a state-responsible (prison) term with a median sentence of two years.

The number of offenders with previous convictions for unlawful wounding of a family member who are subsequently charged with a third family assault under § 18.2-57.2 is not known.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the application of a 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 additional 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 sentencing guidelines cover felony violations of § 18.2-57.2 that are processed in Virginia's circuit courts. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) 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.

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 874 of the 2010 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.