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HOUSE BILL NO. 752

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact § 18.2-57.2 of the Code of Virginia, relating to assault and battery of a family member by strangulation; penalty.*

Patron—Cline

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-57.2 of the Code of Virginia is 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 *in violation of this subsection* is guilty of a Class 1 misdemeanor *except that where it is alleged in the warrant, petition, information, or indictment on which a person is convicted that such person strangled the family or household member, he is guilty of a Class 6 felony.*

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 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 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,~~ any violation of § 18.2-51, 18.2-51.2, or 18.2-52, or (v) (iii) 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 *in violation of this subsection* is guilty of a Class 6 felony *except that where it is additionally alleged in the warrant, petition, information, or indictment on which a person is convicted, that such person strangled the family or household member, he is guilty of a Class 5 felony.*

C. 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.

D. ~~The definition of~~ *For purposes of this section:*

~~"family"~~ *Family or household member" shall have the same meaning as set forth in § 16.1-228 applies to this section.*

"Strangle" means to impede the blood circulation or respiration of a person by knowingly and intentionally (i) applying pressure to the neck or (ii) obstructing the nose, mouth, or breathing passages of such person.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. 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 890 of the Acts of Assembly of 2011 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.

INTRODUCED

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