



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 459 (Patron – Herring)

LD#: 12103601

Date: 01/06/2012

Topic: Strangulation of 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 890 of the 2011 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, relating to assault and battery against a family or household member. Under the proposal, if it is alleged in the warrant, information, or indictment on which a person is convicted of assault and battery against a family or household member, that the offender strangled the family or household member, the person would be guilty of a Class 6 felony. The proposal also increases the penalty for a third or subsequent assault of a family or household member from a Class 6 felony to a Class 5 felony if it is alleged in the warrant, information, or indictment that the offender strangled the victim. The proposal defines “strangle” as the act of knowingly and intentionally impeding the blood circulation or respiration of any person by applying pressure to the neck or by obstructing the nose, mouth or breathing passages of such person.

In addition, the proposal expands 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 caustic substance or fire 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 if it is alleged in the warrant, petition, information, or indictment that the offender has been previously convicted of two assaults against 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 caustic substance or fire), or any similar offense in another jurisdiction. Otherwise, assault of a family or household member is a Class 1 misdemeanor.

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 offenders 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 offenders 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.

LIDS data do not capture individuals who were never booked into a local or regional jail.

Existing databases do not provide sufficient detail to determine the number of assaults on a family or household member that involve strangulation. Additionally, the number of offenders with previous convictions for unlawful wounding of a family member who, under the proposal, could subsequently be charged with a third family assault under § 18.2-57.2 is not known.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The DJJ reports an average of 1,701 intake petitions per year for the three most recent fiscal years (FY 2009 to FY 2011) alleging a violation of § 18.2-57.2(A) of the *Code* by a person under the age of 18. The DJJ averaged 25 commitments to juvenile correctional center each year for FY2009 to FY2011 where the most serious committing offense was a violation of § 18.2-57.2(A). In addition, the DJJ reports averaging about 10 intake petitions per year between FY2009 and FY2011 alleging a felony violation of § 18.2-57.2(B) by a person under the age of 18. According to the DJJ, there were a total of three commitments to juvenile correctional centers during the three-year period for this offense. Data are not maintained on the means or method of the assault and battery.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal increases the penalty for a Class 1 misdemeanor to a Class 6 felony and increases a Class 6 felony to a Class 5 felony if an offender strangles a family or household member. In addition, the proposal expands the application of the existing felony relating to assault of a family or household member to offenders with certain prior convictions. As a result, the proposal may increase 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. It is possible that a person under the age of 18 could commit assault and battery of a family member involving strangulation and be subject to the enhanced penalties of this bill. In such an event, an adjudication for a Class 6 or a Class 5 felony offense in juvenile and domestic relations district court would make that person eligible for commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code*. While the legislative proposal may have an impact on juvenile correctional center bed space needs, the magnitude of the impact cannot be determined with available data.

Juvenile detention facilities. If a person under the age of 18 commits assault and battery of a family member involving strangulation as proposed, the person could be subject to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1. In addition, an adjudication for a Class 6 or a Class 5 felony in juvenile and domestic relations district court would make that person eligible for post-dispositional detention under § 16.1-284.1. While the legislative proposal may have an impact on the bed space needs of juvenile detention facilities, the magnitude of the impact cannot be determined with available data.

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 2011 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.

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