



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 751

(Patron – Stanley)

LD#: 13100649

Date: 12/7/2012

Topic: Aggravated malicious wounding without intent to maim, etc.

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 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-51.2 to make malicious wounding of another without the intent to maim, disfigure, disable, or kill a Class 6 felony if the victim suffers permanent and significant physical impairment.

Currently, under § 18.2-51, maliciously shooting, stabbing, cutting, or wounding any person or by any means causing bodily injury with the intent to maim, disfigure, disable, or kill the person is a Class 3 felony. If the act is accomplished unlawfully but not maliciously, with the intent to maim, disfigure, etc., the offender is guilty of a Class 6 felony. For assaults not subject to felony prosecution, simple assault or assault and battery of a person who is not a law enforcement officer, correctional officer, firefighter, etc., is a Class 1 misdemeanor under § 18.2-57(A). Under § 18.2-57.2, assault of a family or household member is a Class 1 misdemeanor, although the third or subsequent such offense is raised to a Class 6 felony.

The table below contains a comparison between the proposed offense and existing felony assaults defined in §§ 18.2-51 and 18.2-51.2.

Felony Assault Offenses under §§ 18.2-51 and 18.2-51.2

Type of Felony Assault	Offense Elements			Penalty
	Malicious Intent	Intent to Maim, etc.	Permanent Impairment	
Unlawful Wounding (§ 18.2-51)		✓		1-5 Years
Malicious Wounding (§ 18.2-51)	✓	✓		5-20 Years
Aggrav. Malicious Wounding (§ 18.2-51.2)	✓	✓	✓	20 Yrs.-Life
Proposed Offense (§ 18.2-51.2(B))	✓		✓	1-5 Years

The proposal also modifies § 16.1-269.1, relating to juvenile transfers to circuit court, to exempt juveniles who are charged with the proposed felony from being transferred under § 16.1-269.1(B).

Section 18.2-51.2 is referenced in numerous other sections of the *Code*, including § 18.2-53.1 (use of a firearm in commission of certain felonies), § 18.2-57.2 (assault and battery of family member), § 18.2-61 (forcible rape), § 18.2-67.1 (forcible sodomy), § 18.2-67.2 (object sexual penetration), § 18.2-370.3 (sex offenses prohibiting residing in proximity to children), § 18.2-370.4 (sex offenses prohibiting working on school property), and § 18.2-513 (relating to the definitions for racketeering offenses). Since the proposal does not modify these statutes, the offenses and penalty enhancements contained in each are expanded to include the proposed offense.

Analysis:

The proposed offense would have the same penalty structure as the existing crime of unlawful wounding, defined in § 18.2-51. According to Sentencing Guidelines data for fiscal year (FY) 2011 and FY2012, 976 offenders were convicted of a Class 6 felony under § 18.2-51 for unlawful wounding. The assault was the primary, or most serious, offense in 829 of the cases. While 22.4% of these offenders did not receive an active term of incarceration to serve after sentencing, 39.6% were sentenced to a local-responsible (jail) term, with a median sentence length of six months. The remaining 38% of offenders received a state-responsible (prison) term, for which the median sentence was 1.5 years.

Existing databases do not provide sufficient detail to determine the number of assaults resulting in permanent and significant physical impairment that would be covered by the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates a new Class 6 felony offense, which carries a penalty of incarceration for one to five years, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. In addition, expanding § 18.2-51.2 could increase the number of offenders eligible for certain mandatory minimum penalties (such as those contained in §§ 18.2-61, 18.2-67.1, and 18.2-67.2) or who may be convicted of other felony offenses (such as use of a firearm in commission of certain felonies under § 18.2-53.1). However, existing data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs of the Commonwealth. However, the impact on jail bed space needs cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements for additional 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 determined.

Virginia's sentencing guidelines. Because the proposal creates a new felony offense, convictions under the proposed § 18.2-51.2(B) would not be covered by the sentencing guidelines as the primary, or most serious, offense. 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 is necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice reports that while this proposal could cause an increase in commitments, the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space needs 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 3 of the Acts of Assembly of 2012, Special Session I, 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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