



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1884

(Patron – O’Quinn)

LD#: 15101304

Date: 12/31/2014

Topic: Assault and battery against a family member

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$15,825,292 (521 beds)
- **Local Adult Correctional Facilities:**  
At least \$1,931,628 (186 beds)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined\*\*

\*\*Provided by the Department of Juvenile Justice

#### Summary of Proposed Legislation:

The proposal amends § 18.2-57.2 to increase the penalty for assault and battery of a family or household member from a Class 1 misdemeanor to a Class 6 felony in cases in which the offender has one prior conviction for assaulting a family or household member under any of the specified statutes.

Currently, under § 18.2-57.2, an assault and battery of a family or household member is a Class 6 felony if it is the offender’s third assault against a family or household member (occurring on separate dates) within 20 years. Specifically, it is a Class 6 felony 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 (assault and battery against a family member), § 18.2-51 (malicious or unlawful wounding), § 18.2-51.2 (aggravated malicious wounding), § 18.2-52 (malicious injury by means of a substance), § 18.2-51.6 (strangulation), or any similar offense in another jurisdiction. Otherwise, assault and battery of a family or household member is punishable as a Class 1 misdemeanor.

#### Analysis:

During fiscal year (FY) 2013 and FY2014, a total of 12,703 offenders were convicted of a misdemeanor under § 18.2-57.2 for assaulting a family or household member (as the primary, or most serious, offense) in general district court, juvenile and domestic relations court, or circuit court. Examining court data for calendar year 2005 through FY2014 reveals that at least 1,822 offenders had only one prior misdemeanor conviction under § 18.2-57.2, with the offenses committed on separate dates. Slightly more than half (50.3%) of the 1,822 offenders did not receive an active term of incarceration to serve after sentencing. The remaining 49.7% received a local-responsible (jail) term, with a median sentence of two months.

The Sentencing Guidelines database for FY2013 and FY2014 indicates that 451 offenders were convicted of a felony under § 18.2-57.2(B) for a third assault against a family or household member. The assault was the primary, or most serious, offense in 413 of the cases. Half (50.8%) of these offenders were sentenced to a local-responsible (jail) term with a median sentence of six months. Another 32.9% received a state-responsible (prison) term with a median sentence of 1.5 years. The remaining 16.2% did not receive an active term of incarceration to serve after sentencing.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By expanding the applicability of an existing felony offense to include offenders who have one prior conviction for assaulting a family or household member under any of the statutes listed in § 18.2-57.2(B), the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data sources do not contain sufficient detail to identify all cases that would be affected by the proposal, such as cases in which the offender was previously convicted of a malicious wounding against a family member. Based on data currently available to the Commission, the impact on state-responsible (prison) bed space needs is estimated to be at least 521 beds by FY2021. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$15,825,292.

#### Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY16	FY17	FY18	FY19	FY20	FY21
236	415	479	500	512	521

**Local adult correctional facilities.** The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be at least 186 beds by FY2021 (state costs: \$1,931,628; local costs: \$2,785,307).

#### Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY16	FY17	FY18	FY19	FY20	FY21
157	178	181	181	183	186

**Adult community corrections programs.** Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the net impact on local or state community corrections resources that may result from the proposal.

**Virginia's sentencing guidelines.** The sentencing guidelines cover felony violations of § 18.2-57.2 that are processed in Virginia's circuit courts. While no immediate adjustment to the guidelines would be necessary under the proposal, the Sentencing Commission would monitor sentencing practices under the revised law to determine if the guidelines should be adjusted at a later date. This is done in order to ensure that the guidelines reflect actual sentencing practices and continue to provide judges with a benchmark of the typical, or average, case.

**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 is at least \$15,825,292 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the adult state-responsible and local-responsible analyses include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2014.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2014.
3. Cost per prison bed was assumed to be \$30,397 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2013 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.51 per day or \$10,413 per year. The local cost was calculated by using the daily expenditure cost of \$73.60 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$41.11 per day or \$15,015 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2015, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2013. For assaults, this rate was 9.1%.
3. It was assumed that prosecutors would charge all eligible offenders under the proposed felony provision.
4. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing Class 6 felony provision for a third or subsequent assault and battery of a family or household member under § 18.2-57.2.

**Limitations**

1. The Circuit Court Case Management System excludes cases from Fairfax, Alexandria, or Virginia Beach.
2. The Juvenile and Domestic Relations District Court (JDR) data used for the current analysis only include adults convicted in JDR.

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