



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 765 (Patron – Gilbert)

LD#: 16103550

Date: 1/11/2016

Topic: Assault and battery of a family or household 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:**
None (\$0) **
- **Juvenile Detention Facilities:**
None (\$0) **

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the 2015 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 § 18.2-57.3, relating to assault and battery against a family or household member. Currently, this section provides that an adult charged with his or her first offense of assault and battery against a family or household member under § 18.2-57.2 may be placed on probation and, if the individual fulfills the terms and conditions specified by the court, the court may dismiss the charge. Assault and battery of a family or household member is punishable as a Class 1 misdemeanor under § 18.2-57.2. The penalty for this offense is elevated to a Class 6 felony if it is alleged in the warrant, etc., that the offender has been previously convicted of two specified offenses against a family or household member. Similarly, a second misdemeanor stalking conviction within five years under § 18.2-60.3 is elevated to a Class 6 felony if the offender was also convicted within the five-year period of a violation of § 18.2-57.2.

Under the proposal, any instance of assault and battery against a family or household member for which disposition was deferred under § 18.2-57.3 would be included in the list of prior offenses that could elevate either a third offense of assault and battery against a family or household member or a second stalking offense within five years to a Class 6 felony. Thus, the proposal would expand the circumstances under which the enhanced penalties for these offenses would apply. Penalties prescribed in §§ 18.2-57.2 and 18.2-60.3 would remain the same.

Analysis:

According to the fiscal year (FY) 2014 and FY2015 Sentencing Guidelines database, 488 offenders were convicted of a Class 6 felony under § 18.2-57.2 for a third or subsequent assault and battery against a family or household member. This offense was the primary, or most serious, offense in 459 cases. Of these, 14.2% did not receive an active term of incarceration after sentencing. Another 51.4% received a

local-responsible (jail) term, with a median sentence of six months. The remaining 34.4% received a state-responsible (prison) term, for which the median sentence was 1.5 years.

The Case Management Systems (CMS) for General District Court, Circuit Court, and the Juvenile and Domestic Relations Court for FY2014 and FY2015 indicates that 12,483 offenders were convicted of a Class 1 misdemeanor under § 18.2-57.2 for assault and battery against a family or household member. This crime was the primary, or most serious, offense in 12,319 cases. Of these, 60.8% did not receive an active term of incarceration to serve after sentencing. The other 39.2% received a local-responsible (jail) term, with a median sentence of two months. Data do not contain sufficient detail to determine what percent of these misdemeanor convictions would be elevated to a Class 6 felony under the proposal.

According to the CMS data for FY2010 through FY2015, no offenders were convicted of a Class 6 felony under § 18.2-60.3 for stalking following a violation of § 18.2-57.2 within the past five years.

Data available to the Commission do not contain sufficient detail to determine the number of individuals charged with assaulting a family or household member for whom the court deferred the disposition and ultimately dismissed the charge.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the circumstances under which existing felonies would apply, the proposal may result in additional felony convictions. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions that may result cannot be estimated. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

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

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. The sentencing guidelines cover felony violations of § 18.2-57.2 when this offense is the primary, or most serious, offense in a case. Felonies under § 18.2-60.3 are not covered; however, a conviction for such an offense may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 665 of the 2015 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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