



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 767

(Patron – Gilbert)

LD #: 16100428

Date: 12/27/2015

Topic: Deferral and dismissal

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0) *
- **Juvenile Detention Facilities:**
None (\$0) *

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal repeals § 18.2-57.3, relating to the deferral and dismissal of certain charges, and removes references to this statute elsewhere in the *Code*. Currently, § 18.2-57.3 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. However, the Supreme Court of Virginia concluded in *Hernandez v. Commonwealth* (2011) that, in any case, the court has “the inherent power, in the exercise of its discretion, to take the matter under advisement and to continue the case for future disposition, subject to such lawful conditions as the court might prescribe.” Based this ruling, judges have the authority to defer a disposition and dismiss a criminal case, and explicit authorization such as that provided in § 18.2-57.3 is not required.

Upon conviction, assault and battery of a family or household member under § 18.2-57.2 is a Class 1 misdemeanor. A third or subsequent conviction for this offense within 20 years is a Class 6 felony.

Analysis:

According to the Case Management Systems (CMS) for General District Court, Circuit Court, and the Juvenile and Domestic Relations Court for fiscal year (FY) 2014 and FY2015, 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 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. While the proposal would remove the specific provision authorizing a judge to defer and dismiss a charge for assault and battery against a family or household member, the Supreme Court of Virginia ruled in *Hernandez v. Commonwealth* that judges have inherent power to proceed in that manner for any offense. Thus, judges would be able to continue handling cases in the same manner as they had previously under § 18.2-57.3. As such, the proposal is unlikely to increase the state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, the proposal is not expected to increase local-responsible (jail) bed space needs.

Adult community corrections resources. The proposal is unlikely to affect adult community corrections programs.

Virginia’s sentencing 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 is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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