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HOUSE BILL NO. 661

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact § 18.2-57.3 of the Code of Virginia, relating to first offense assault and battery against a family or household member; enhanced penalty.

Patrons—Murphy, Delaney, Ayala, Boysko, Filler-Corn and Hurst

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-57.3 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-57.3. Persons charged with first offense of assault and battery against a family or household member may be placed on local community-based probation; conditions; education and treatment programs; costs and fees; violations; discharge.

A. When a person is charged with a simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person or a violation of § 18.2-57.2, the court may defer the proceedings against such person, without a finding of guilt, and place him on probation under the terms of this section.

B. For a person to be eligible for such deferral, the court shall find that (i) the person was an adult at the time of the commission of the offense; (ii) the person has not previously been convicted of any offense under this article or under any statute of the United States or of any state or any ordinance of any local government relating to an assault or assault and battery against a family or household member; (iii)(a) the person has not previously been convicted of an act of violence as defined in § 19.2-297.1 or (b) if such person has been previously convicted of such an act of violence, the attorney for the Commonwealth does not object to the deferral; (iv) the person has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section; (v) the person pleads guilty to, or enters a plea of not guilty or nolo contendere and the court finds the evidence is sufficient to find the person guilty of, simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person or a violation of § 18.2-57.2; and (vi) the person consents to such deferral and to a waiver of his right to appeal a finding of facts sufficient to justify a finding of guilt under this section entered pursuant to subsection F for a violation of a term or condition of his probation. A person may file a motion to withdraw his consent to the deferral and waiver of his right to appeal within 10 days of the entry of the order deferring proceedings on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. The court shall schedule a hearing within 30 days of receipt of the motion and shall provide reasonable notice to the attorney for the Commonwealth and to the person and his attorney, if any. If the person appears at the hearing and requests to withdraw his consent, the court shall grant such request, enter a final order adjudicating guilt, and sentence the person accordingly. If the person does not appear at the hearing, the court shall deny his request to withdraw his consent.

C. The court shall (i) where a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 is available, order that the eligible person be placed with such agency and require, as a condition of local community-based probation, the person to successfully complete all treatment, education programs or services, or any combination thereof indicated by an assessment or evaluation obtained by the local community-based probation services agency if such assessment, treatment or education services are available; or (ii) require successful completion of treatment, education programs or services, or any combination thereof, such as, in the opinion of the court, may be best suited to the needs of the person.

D. The court shall require the person entering such education or treatment program or services under the provisions of this section to pay all or part of the costs of the program or services, including the costs of any assessment, evaluation, testing, education and treatment, based upon the person's ability to pay. Such programs or services shall offer a sliding-scale fee structure or other mechanism to assist participants who are unable to pay the full costs of the required programs or services.

The court shall order the person to be of good behavior for a total period of not less than two years following the deferral of proceedings, including the period of supervised probation, if available.

The court shall, unless done at arrest, order the person to report to the original arresting law-enforcement agency to submit to fingerprinting.

E. Upon fulfillment of the terms and conditions specified in the court order, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be

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59 without adjudication of guilt and is a conviction only for the purposes of applying this section in
60 subsequent proceedings; *however, such discharge and dismissal shall be treated as a conviction for the*
61 *purposes of subsection B of § 18.2-57.2.* No charges dismissed pursuant to this section shall be eligible
62 for expungement under § 19.2-392.2.

63 F. Upon violation of a term or condition of supervised probation or of the period of good behavior,
64 the court may enter an adjudication of guilt and proceed as otherwise provided by law. Any person
65 placed on probation pursuant to this section who is subsequently adjudicated guilty upon a violation of a
66 term or condition of his probation shall have no right of appeal on such adjudication.

67 G. Notwithstanding any other provision of this section, whenever a court places a person on
68 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
69 for purposes of Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7.

70 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
71 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
72 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
73 **836 of the Acts of Assembly of 2017 requires the Virginia Criminal Sentencing Commission to**
74 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
75 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
76 **Department of Juvenile Justice.**