Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1237

(Patron – Delaney et al.)

LD#: 18100890 **Date:** 11/22/2017

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 Direct Care:** 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 836 of the 2017 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 against a family or household member (§ 18.2-57(A)) or first offense of assault and battery against a family or household member (§ 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 (§ 18.2-57(A)) and assault and battery of a family or household member (§ 18.2-57.2(A)) are punishable as Class 1 misdemeanors. Under § 18.2-57.2(B), the penalty for assault and battery of a family or household member is elevated to a Class 6 felony if it is alleged in the warrant, petition, information or indictment that the offender has been previously convicted of two specified offenses against a family or household member.

Under the proposal, any instance of assault or assault and battery against a family or household member for which disposition was deferred under § 18.2-57.3 must be included in the list of prior offenses that would elevate a third offense of assault and battery against a family or household member to a Class 6 felony. Thus, the proposal would expand the circumstances under which the enhanced penalty for this offense would apply. Penalties prescribed in §§ 18.2-57 and 18.2-57.2 would remain the same.

Analysis:

According to fiscal year (FY) 2016 and FY2017 Sentencing Guidelines data, 433 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 380 cases. Of these, 16.1% did not receive an active term of incarceration to serve after sentencing. Another 52.4%

were given a local-responsible (jail) term, with a median sentence of seven months. The remaining 31.5% received a state-responsible (prison) term, for which the median sentence was 1.7 years.

The Case Management Systems (CMS) for General District Court, Circuit Court, and the Juvenile and Domestic Relations Court for FY2016 and FY2017 indicates that 11,462 offenders were convicted of a Class 1 misdemeanor under § 18.2-57.2 for assault and battery against a family or household member (as the primary, or most serious, offense). Of these, 60.3% did not receive an active term of incarceration to serve after sentencing. The other 39.7% received a local-responsible (jail) term for which the median sentence was 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.

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 an existing felony 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. Misdemeanor offenses 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 direct care. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to have an impact on direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to impact 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 836 of the 2017 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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