



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 1808 (Patron – Gooditis)

**LD#:** 19101836

**Date:** 12/20/2018

**Topic:** Crimes committed in the presence of a minor

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
None (\$0)

- **Juvenile Direct Care:**  
Cannot be determined \*\*
- **Juvenile Detention Facilities:**  
Cannot be determined \*\*

\*\* 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 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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#### Summary of Proposed Legislation:

The proposal adds § 18.2-57.5, relating to crimes committed in the presence of a minor. Under the proposal, any person who commits an assault and battery (§ 18.2-57) or an assault and battery against a family or household member (§ 18.2-57.2) while (i) in the physical presence of a minor and (ii) knowing or having reason to know that such minor may see or hear such assault and battery is guilty of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense. Furthermore, any person who commits an act of violence as defined in § 19.2-297.1 while (i) in the physical presence of a minor and (ii) knowing or having reason to know that such minor may see or hear such act of violence is guilty of a Class 5 felony. Violation of the proposed section would constitute a separate and distinct offense and prosecution for the proposed crime would not prohibit prosecution under any other applicable section of the *Code*.

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#### Analysis:

Based on information from the Sentencing Guidelines Data System and the Court Case Management Systems, it is estimated that 25,718 offenders were sentenced during fiscal year (FY) 2017 and FY2018 for an assault or an assault and battery under § 18.2-57 or § 18.2-57.2 or an act of violence defined in § 19.2-297.1 (see table below). Available data are insufficiently detailed to identify individuals who committed the offense in the presence of a child and, therefore, might be subject to the proposed penalties. Moreover, the number of individuals convicted of assault under § 18.2-57 whose offense involved battery, as required by the proposal, cannot be accurately determined with the available data.

Code Section	Number of Offenders Sentenced in FY2017-FY2018
§ 18.2-57 - Misdemeanor assault or assault and battery <sup>1</sup>	9,860*
§ 18.2-57 - Felony hate crime assault <sup>1</sup>	1
§ 18.2-57(C) - Felony assault or assault and battery of a law enforcement officer, correctional officer, firefighter, etc. <sup>2</sup>	1,100
§ 18.2-57.2 - Misdemeanor assault and battery of a family or household member <sup>1</sup>	11,149*
§ 18.2-57.2 - Felony (3 <sup>rd</sup> or subsequent) assault and battery of a family or household member <sup>2</sup>	451
§ 19.2-297.1 – Act of violence <sup>2</sup>	3,157
<b>Total</b>	<b>25,718</b>

\* This figure includes convictions in General District Court, Juvenile and Domestic Relations Court, and Circuit Court. However, convictions in Circuit Court were only included if the misdemeanor was the primary, or most serious, offense (i.e., for these offenders, all felony charges were nolle prossed, dismissed, resulted in a not guilty finding, or were reduced to misdemeanors).

<sup>1</sup> Sources: Supreme Court of Virginia - Court Case Management Systems (CMS) for Circuit Court, General District Court, and Juvenile & Domestic Relations Court, FY2017-FY2018

<sup>2</sup> Source: Virginia Criminal Sentencing Commission - Sentencing Guidelines Data System, FY2017-FY2018

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By establishing new felonies and misdemeanors, violation of which would constitute separate and distinct offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of new felony convictions that may result is unknown. Furthermore, the proposed felonies and misdemeanors may be in addition to the convictions for underlying offenses and, thus, could result in longer prison sentences for some affected offenders. The number of offenders who may be affected by the proposal, and the impact of sentences, 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 also increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

**Adult community corrections programs.** Because the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for state community corrections resources and reduce the need for local community corrections programs. However, the net effect of the proposal is unlikely to increase the overall need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as those individuals will serve longer incarceration terms prior to being released to the community.

**Virginia's sentencing guidelines.** Felony convictions under § 18.2-57(C) and § 18.2-57.2, as well as most of the crimes specified as acts of violence in § 19.2-297.1 are covered by the sentencing guidelines. While other crimes are not covered by the guidelines when they are the primary, or most serious, offense, such convictions could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I, 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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