

**REPORT OF THE  
VIRGINIA STATE CRIME COMMISSION  
FAMILY VIOLENCE SUB-COMMITTEE**

**HB 932  
Definition of a Family or Household  
Member**

**A BILL REFERRAL STUDY TO  
THE VIRGINIA STATE CRIME COMMISSION AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**COMMONWEALTH OF VIRGINIA  
RICHMOND  
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## I. Authority

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The *Code of Virginia*, §30-156, authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Additionally, the Commission is to study matters “including apprehension, trial and punishment of criminal offenders.” Section 30-158(3) provides the Commission the power to “conduct studies and gather information and data in order to accomplish its purposes as set forth in §30-156. . .and formulate its recommendations to the Governor and the General Assembly.”

Using the statutory authority granted to the Crime Commission, the staff of the Virginia State Crime Commission, Family Violence Sub-Committee conducted a study on the definition of a family or household member.

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## II. Executive Summary

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During the 2003 Session of the Virginia General Assembly, Delegate Bradley P. Marrs introduced House Bill 932 (HB 932),<sup>1</sup> expanding the crime of assault and battery against a family or household member (Class 1 misdemeanor for a first offense) to include as a victim, a child of a family or household member. This bill was left in the House Courts of Justice Committee and referred by letter to the Virginia State Crime Commission, and subsequently to the Family Violence Sub-Committee (FVS), for further study. As a result of the study effort, staff presented the following policy options for consideration:

- Policy Option 1: Change the definition of a family or household member as defined in *Virginia Code* § 16.1-228 to include a child of a family or household member.
- Policy Option 2: Address the problems with the penalty phase in the current version of HB 932 by including the language “or against a child of a family or household member” in *Virginia Code* § 18.2-57.2 (B).
- Policy Option 3: Recommend the General Assembly not support the enactment of HB 932 as drafted.

### **Recommendation:**

The FVS recommended the General Assembly not support the enactment of HB 932 as drafted. The Virginia State Crime Commission voted to accept the recommendation of the Family Violence Sub-Committee.

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## III. Methodology

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Staff of the Virginia State Crime Commission’s Family Violence Sub-Committee

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<sup>1</sup> House Bill 932 (2003). See attachment 1.

utilized four research methodologies to examine HB 932. First, staff conducted a review of *Code of Virginia* relating to the current definition of a “family or household member.” Second, staff examined other states’ statutes to determine if they included a child of a family or household member in their definition of a family or household member and/or included, as a victim, a child of a family or household member in their family violence statutes. Third, staff analyzed the *United States Code* and federal laws relating to family violence and the definition of a family or household member for relevancy to the issues in HB 932. Fourth, staff analyzed federal and state case law to determine who is included as a victim regarding domestic abuse statutes.

#### **IV. Background: Virginia Law**

*Virginia Code* § 18.2-57.2 makes any person who commits an assault and battery against a family or household member guilty of a Class 1 misdemeanor. This section also provides for an enhanced penalty on a third or subsequent conviction for assault and battery against a family or household member as long as two conditions are met:

1. That such a person has been previously convicted twice of assault and battery against a family/household member, or of a similar offense under the law of any other jurisdiction, within ten years of the third or subsequent offense; and,
2. Each assault and battery occurred on different dates, such person shall be guilty of a Class 6 felony.

Furthermore, whenever a warrant for a violation of this section is issued, except if the defendant is a minor, the magistrate shall issue an emergency protective order. The juvenile and domestic relations court maintains jurisdiction over all offenses in which one family or household member is charged with an offense in which another family or household member is the victim.<sup>2</sup>

Currently, the only victims included in the *Code of Virginia* § 18.2-57.2 are family or household members. HB 932 looks to expand this class of victims protected by this statute to include a child of a family or household member. The *Code of Virginia* § 16.1-228 defines “family or household member” as:

“(i) the person’s spouse, whether or not he or she resides in the same home with the person, (ii) the person’s former spouse, whether or not he or she resides in the same home with the person, (iii) the person’s parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person’s mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-

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<sup>2</sup> VA Code Ann. § 16.1-241(J) (2003).

in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve months, cohabited with the person, and any children of either of them then residing in the same home with the person.”

Under this definition, a child is included within the definition of a family or household member if he/she is the child of the person who committed the assault and battery of a family or household member. Additionally, a child is included in this definition if he/she is the child of a person who currently cohabits with, or during the previous 12 months cohabited with the person who committed the assault and battery and lived with them during that period of cohabitation.

Expanding the crime of assault and battery against a family or household member to include as a victim, a child of a family or household member, would protect:

- A child of a spouse or former spouse, whether or not he/she resides in the same home with the person;
- A child of the person’s stepparents, whether or not he/she resides in the same home with the person;
- A child of the person’s stepchildren, whether or not he/she resides in the same home with the person;
- A child of the person’s brothers or sisters, whether or not he/she resides in the same home with the person;
- A child of the person’s grandparents, whether or not he/she resides in the same home with the person;
- A great-grandchild, whether or not he/she resides in the same home with the person;
- A child of a son/daughter-in-law, who resides in the same home with the person; and,
- A child of a brother/sister-in-law, who resides in the same home with the person.

However, as HB 932 currently reads, the class of victims is only expanded for purposes of *Virginia Code* § 18.2-57.2 (A). Because the language, “or against a child of a family or household member” is not included in *Virginia Code* § 18.2-57.2 (B), HB 932 does not provide for the enhancement of penalties for the assault and battery of a child of a family or household member, but only provides enhancement for the assault and battery of a family or household member. As such, conviction for assault and battery of a child of a family or household member results in same punishment as prescribed for a conviction of simple assault and battery, a misdemeanor.

## V. Legislative History

Determining the potential that *Virginia Code* § 18.2-57.2 could be amended to expand the crime of assault and battery against a family or household member to include as a victim, a child of a family or household member requires an analysis of the evolution of the relevant parts of this code section, as well as the evolution of *Virginia Code* § 16.1-228. *Virginia Code* § 18.2-57.2 originated in the 1991 Virginia General Assembly, defining a “family or household member” within the code section itself as the defendant’s spouse or former spouse, whether or not he/she resides in the same home with the defendant; the defendant’s parents and children, brothers and sisters, grandparents and grandchildren, mother-in-law, father-in-law, brothers-in-law and sisters-in-law who reside in the same home with the defendant; or any person who has a child in common with the defendant, whether or not the defendant and that person have been married or have resided together at any time.<sup>3</sup> In 1992, the Virginia General Assembly added to the definition of a “family or household member” in *Virginia Code* § 18.2-57.2, stepparents, stepchildren, son-in-law, and daughter-in-law who reside in the same home with the defendant, or any individual who cohabits or who, within the previous twelve months, cohabited with the person, and any children of either of them residing in the same home with the defendant.<sup>4</sup> In 1999, *Virginia Code* § 18.2-57.2 ceased defining “family or household member” within the code section and instead indicated that the definition of a family or household member defined in *Virginia Code* § 16.1-228 applied to the section.<sup>5</sup>

*Virginia Code* § 16.1-288 first made reference to familial abuse in 1984 when it defined “spouse abuse” as any act of violence including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person’s spouse, notwithstanding that such persons are separated and living apart.<sup>6</sup> Then, in 1992, the Virginia General Assembly defined both family abuse and family or household member, and deleted the definition of spouse abuse. The section defined “family abuse” as any act of violence, including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person’s family or household member. Then, it defined “family or household member” as the person’s spouse or former spouse, whether or not he or she resides in the same home with the person; the person’s parents, stepparents, children, stepchildren, brothers, sisters, grandparents, grandchildren, mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law who reside in the same home with the person; any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time; or, any individual who cohabits or who, within the previous twelve months, cohabited with the person, and any children of either of them then residing in the same home with the person.<sup>7</sup> Finally, during the 2003 Virginia General Assembly session,

<sup>3</sup> House Bill 1990, 1991 General Assembly, Reg. Sess., (Va. 1991).

<sup>4</sup> House Bill 306, 1992 General Assembly, Reg. Sess., (Va. 1992).

<sup>5</sup> Senate Bill 848, 1999 General Assembly, Reg. Sess., (Va. 1999).

<sup>6</sup> General Assembly Session, Reg. Sess., (Va.1984).

<sup>7</sup> House Bill 1037, General Assembly Session, Reg. Sess., (Va. 1992).

*Virginia Code* § 16.1-228 was amended to include half-brothers and half-sisters of the person who reside in the same home with the person.<sup>8</sup>

## **VI. Other States' Laws**

All fifty states have statutes related to family violence and the definition of a family or household member.<sup>9</sup> Specifically, two states, Kentucky<sup>10</sup> and South Dakota,<sup>11</sup> have statutes that define a family or household member as Virginia does under its current definition in *Virginia Code* § 16.1-228, and one state, Maine's,<sup>12</sup> definition of a family or household member would be identical to Virginia's definition if Virginia expanded the crime of assault and battery against a family or household member to include as a victim, a child of a family or household member. Ten states specifically include the child of a family or household member in their definition of a family or household member. Of these 10 states, 5 include a child of a family or household member in their definitions sections and 5 include it in their specific family violence statutes. On the other hand, 12 states specifically exclude a child of a family or household member from this definition, with 9 states providing this exclusion in their definitions sections and 3 states providing this exclusion statutorily.

Additionally, many states family violence statutes go beyond Virginia by including more persons under their definition of a family or household member. For example:

- 21 states protect persons in a current or former dating relationship;
- 9 states protect persons in a current or former sexual relationship;
- 2 states protect persons formerly related by marriage;
- 5 states protect persons who are pregnant by the respondent;
- 1 state protects children/minors residing in the household;
- 1 state protects adults living in a child's home; and,
- 2 states protect reciprocal beneficiaries, and 1 state protects the current spouse of a former spouse.<sup>13</sup>

## **VII. Conclusion and Recommendation**

### **Recommendation:**

It is the recommendation of the Virginia State Crime Commission that the General Assembly not support the enactment of HB 932 as drafted.

<sup>8</sup> House Bill 1533, General Assembly Session, Reg., Sess., (Va. 2003).

<sup>9</sup> Virginia State Crime Commission, Family Violence Sub-Committee, "State Comparison Chart of the Definition of a Family or Household Member." See attachment 2.

<sup>10</sup> Ky. Rev. Stat. Ann. § 403.720 (2002).

<sup>11</sup> S.D. Codified Laws § 25-10-1 (2003).

<sup>12</sup> Me. Rev. Stat. Ann. Tit. 15 § 321 (2003).

<sup>13</sup> Virginia State Crime Commission, Family Violence Sub-Committee, "State Comparison Chart of the Definition of a Family or Household Member." See attachment 2.



Staff of the Virginia State Crime Commission Family Violence Sub-Committee recommended three policy options for consideration. First, instead of adding the language “or against a child of a family or household member” in *Virginia Code* § 18.2-57.2(A), the staff recommended changing the definition of a family or household member as defined in *Virginia Code* § 16.1-228 to include a child of a family or household member. Including a child of a family or household member within the definition of a family or household member ensures that a violation of *Virginia Code* § 18.2-57.2 comes under the jurisdiction of the juvenile and domestic relations courts and allows for deferred disposition as outlined in *Virginia Code* § 18.2-57.3. Additionally, inclusion in the definitions section of *Virginia Code* § 16.1-228 provides consistency throughout the *Code*. Limiting the inclusion of a child of a family or household member to the class of victims in *Virginia Code* § 18.2-57.2 fails to give this child of a family or household member the protections afforded other family or household members, such as the availability of protective orders and witness protection.

However, as a practical consideration, changing the definition of a family or household member to include a child of a family or household member creates the possibility of confusion under the federal Domestic Violence Offender Gun Ban of 1996.<sup>14</sup> This law prohibits the owning or using of firearms if an individual (1) has ever been convicted of a misdemeanor domestic violence offense or (2) is currently subject to a restraining order regarding an intimate partner or the child of such a partner. The Domestic Violence Offender Gun Ban also makes it unlawful to sell or give a firearm or ammunition to a person who is known to have been convicted of misdemeanor domestic violence or to be under a domestic violence protective order that meets certain qualifications. The United States Code defines a misdemeanor crime of domestic violence as “an offense that is a misdemeanor under Federal or State law and has, as an element, the use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”<sup>15</sup> Yet, because the Federal law defines the victims of a misdemeanor crime of domestic violence more narrowly than the *Code of Virginia* in its definition of a “family or household member,” a person who assaults a child of a family or household member would not commit a misdemeanor crime of domestic violence for purposes of the Federal law.

As a second policy option for consideration, staff recommended addressing the problems with the penalty phase in the current version of HB 932 by including the language “or against a child of a family or household member” in *Virginia Code* § 18.2-57.2 (B). The addition of this language ensures that on a third or subsequent conviction for assault and battery against a family or household member or against a child of a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that (i) such person has been previously convicted twice of assault and battery against a family or household member, or against a

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<sup>14</sup> 18 U.S.C. § 922 (g)(8), (9).

<sup>15</sup> *Id.*

child of a family or household member, or of a similar offense under the law of any other jurisdiction, within ten years of the third or subsequent offense, and (ii) each such assault and battery occurred on different dates, such person shall be guilty of a Class 6 felony. As the bill is currently drafted, the only penalty available for assault and battery against a child of a family or household member is a misdemeanor.

As a third policy option for consideration, staff recommended the General Assembly not support the enactment of HB 932 as drafted because it fails to provide an effective solution to domestic violence. HB 932 expands the class of victims under *Virginia Code* § 18.2-57.2, but leaves subsequent violations of this provision punishable by a misdemeanor, not a Class 6 felony, which is the same punishment proscribed for simple assault and battery. Furthermore, inclusion of a child of a family or household member under this statute does not ensure that the perpetrator comes under the purview of the juvenile and domestic relations court.

After considering the three policy options, the FVS recommended the General Assembly not support the enactment of HB932 as drafted. The Virginia State Crime Commission voted to accept the recommendation of the FVS.