

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

HB 220

**Assault and Battery Against a
Family or Household Member**

**A BILL REFERRAL STUDY TO
THE HOUSE RULES COMMITTEE AND
THE GENERAL ASSEMBLY OF VIRGINIA**



**COMMONWEALTH OF VIRGINIA
RICHMOND
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I. Authority

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 conducted a study on enhancement of penalties for assault and battery against a family/household member.

II. Executive Summary

During the 2002 Session of the Virginia General Assembly, Delegate Charles W. Carrico, Sr., introduced House Bill 220 (HB 220),¹ which would amend §18.2-57.2,² *Code of Virginia* related to the enhancement of penalties for assault and battery against a family/household member. This bill was referred to the Senate Courts of Justice Committee where it was left in Committee pending referral and study by the Virginia State Crime Commission. As a result of the study effort, the following recommendations will be made to the Committee concerning the passage of the bill as presented.

Recommendation

Because this proposed legislative implementation would alter the current policy regarding criminal punishment enhancement in the *Code of Virginia*, it is the recommendation of the Virginia State Crime Commission that this legislation not be adopted.

¹ House Bill 220, 2002 General Assembly, Reg. Sess., (Va. 2002). See attachment 1.

² §18.2-57.2. Assault and battery against a family or household member.

A. Any person who commits an assault and battery against a family or household member shall be guilty of a Class 1 misdemeanor.

B. On a third or subsequent conviction for assault and battery against 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 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.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by §16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in §16.1-228 applies to this section.

III. Methodology

The Virginia State Crime Commission utilized three research methodologies to examine HB 220. First, Virginia's current statutory scheme regarding enhancement of penalties upon a third or subsequent conviction was examined to determine conformity of the changes proposed in HB 220. Second, the Commission, in conjunction with the Virginia Criminal Sentencing Commission, examined the number of victims and those convicted under §18.2-57.2 and §18.2-57.2(B). Analyses were conducted for the sentences given for such violations and the number of different victims on the same date of the offense. Third, other state statutes were examined to determine if they had applicability with similar charges and enhanced punishments.

IV. Background

Virginia Code §18.2-57.2 originated in the 1991 Virginia General Assembly as House Bill 1990 (HB 1990).³ The enhancement penalty portion in §18.2-57.2(B) originally did not include any date distinguishing toward the enhanced penalty for the third or subsequent assault and battery against a family or household member.⁴ House Bill 1990 was referred to the House Committee for Courts of Justice and the enhancement language found in the current *Code* was added in the amended bill proposed by the Committee.⁵

Currently, §18.2-57.2(B), *Code of Virginia*, provides for an enhanced penalty on a third or subsequent conviction for assault and battery against a family or a 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.

Any person who commits an assault and battery against a family or household member shall be guilty of a Class 1 misdemeanor. However, if both of the above conditions are met, then the defendant is charged with a Class 6 felony on a third or subsequent conviction. House Bill 220 amends the second of these two conditions by allowing an assault and battery against a family or household member to be considered for enhancement that occurred on the same date provided that they "involved two or more

³ House Bill 1990, 1991 General Assembly, Reg. Sess., (Va. 1991). See attachment 2.

⁴ *Id.*

⁵ House Bill 1990, 1991 General Assembly, Reg. Sess., (Va. 1991), Amendment in the Nature of a Substitute. See attachment 3.

different victims.”⁶ Although each of the requisite two offenses may have stemmed from the same incident, each of those offenses could be considered distinct and separate offenses under the proposed statutory change. For example, Father throws a drink can at Grandmother, hitting her. The can bounces off of her head and hits Mother. The can then bounces off of Mother onto Baby. Father could be charged with 3 counts of assault and battery against a family or household member and a Class 6 felony.

V. Data Analyses

The Virginia Criminal Sentencing Commission was able to provide two sources of information regarding assault and battery of family members. First, the Local Inmate Data System (LIDS) provides information on conviction and incarceration rates in Virginia under §18.2-57.2(A).

Based on FY2001 LIDS data, 2,475 offenders held pre- or post-trial in jail were convicted of misdemeanors under §18.2-57.2(A). Ninety-two percent (92%) received jail terms, six percent (6%) received probation, and two percent (2%) were convicted of additional charges and sentenced to prison terms.

Approximately sixty-eight percent (68%) of the LIDS cases were convictions for a single count of family member assault and battery corresponding to a single offense date. Twenty-seven percent (27%) were multiple count convictions associated with a single offense date and five percent (5%) were multiple-count convictions associated with multiple offense dates.

A second source of information regarding convictions and incarcerations for violations of §18.2-57.2 (B) is the Pre-Sentence Investigation (PSI) database. Based on CY1999 and CY2000 PSI data, 275 offenders were convicted of the felony provision of §18.2-57.2 as the primary (most serious) offense. Of those convictions, thirty-three percent (33%) of the offenders received a state prison term, with a median sentence of 1.3 years.⁷

VI. Current Virginia Law

Current Virginia statutory law utilizes an enhanced penalty approach that is geared to the number of actual convictions when considering the classifications of punishment for repeat offenders in several areas of the *Code*.⁸

⁶ House Bill 220, 2002 General Assembly, Reg. Sess., (Va. 2002). See attachment 1.

⁷ Virginia Criminal Sentencing Commission, Research Brief, Assault and battery against a family or household member, May 3, 2002. See attachment 4.

⁸ For statutes in entirety, see attachment 5.

The language in the following statutes distinguishing the acts that combine to activate the enhanced penalties differ. A crime *occurring on different dates*, is used in the following statutes:

- §18.2-57.2. Assault and battery against a family or household member; penalty.
- §18.2-311.2. Third conviction of firearm offenses; penalty.
- § 18.2-67.5:1. Punishment upon conviction of third misdemeanor offense.

Other statutes using the precursor language relating to offenses combining to activate the enhanced penalty use the term (where such offenses) *were not part of a common act, transaction or scheme*:

- §18.2-46.1. Definitions. "Pattern of criminal gang activity."
- §18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.
- § 18.2-67.5:3. Punishment upon conviction of certain subsequent violent felony sexual assault.
- §18.2-370. Taking indecent liberties with children, penalties.
- §18.2-370.1. Taking indecent liberties with child by person in custodial or supervisory relationship; penalties.
- §19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.

Thus, an analysis of Virginia's current statutory language regarding crimes with enhanced penalties illustrates an intent and precedence to differentiate between the number of criminal convictions rather than multiple events in singular criminal acts in the majority of the statutes with enhanced punishment provisions.

VII. Other States' Laws

Of the surrounding states, only Kentucky and West Virginia have statutes concerning the enhancement of criminal classification for multiple assaults on family and household members. Although both Kentucky and West Virginia's statutes provide for

the enhancement of penalties, neither contain provisions similar to those which proposed HB 220 would provide.

The Commonwealth of Kentucky retains the discretion to prosecute the enhanced offense, as does the judge or jury in meting out the felony. More aptly, Kentucky has a “three strikes optional” policy.⁹

West Virginia states that prosecutions under the enhanced statutes cannot be coupled with prosecutions under the misdemeanor statutes for the same act.¹⁰ This is very similar to Virginia’s practice of enhancing penalties for previous convictions, not acts stemming from the same incident.

VIII. Conclusion

House Bill 220 would depart from traditional Virginia statutory law by instituting a change in traditional legislative policy in creating an enhanced penalty for offenses stemming from the same incident. The previous approach of the legislature for such crimes has been that each offense must be a separate and distinct conviction, different acts, or on different dates in order to count toward the enhancement of a third or subsequent offense. This is demonstrated by the clear amendment of HB 1990, the genesis of §18.2-57.2., in its distinction of differing dates of conviction. House Bill 220 would set a statutory departure by which offenses that do not occur in a clearly separate and distinct incident would be combined to reach the enhanced classification offense.

Recommendation

Because this proposed legislative implementation would alter the current policy regarding criminal enhancement in the *Code of Virginia*, it is the recommendation of the Virginia State Crime Commission that this legislation not be adopted.

⁹ Ky. Rev. Stat. Ann. §508.032(1) (2000). See attachment 6.

¹⁰ W. Va., Code §61-2-28(f) (2002). See attachment 7.