



## Impact Analysis on Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1118

(Patrons – Lucas et al.)

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LD #: 03-4289577

Topic: Fail to pay court-ordered child support

#### Proposed Change:

This proposal amends § 16.1-278.16 to establish a Class 6 felony for failing to pay court-ordered child support for a period of six months or more. Currently, failure to pay court-ordered child support is punishable by a maximum of 12 months in jail, regardless of the period of nonpayment.

#### Current Practice:

According to the Local Inmate Data System (LIDS) data system, which contains information on offenders held pre- or post-trial in jail, there were 4,536 convictions for failure to comply with court-ordered child support under § 16.1-278.16 during fiscal year (FY) 2001 and FY2002. During the same time period, there were 1,358 convictions for failure to comply with a court order for spousal/child support under the contempt of court statute (§ 16.1-292(B)). In nearly all of the cases, the court imposed an active jail sentence. These offenders were sentenced to serve a median term of six months in a local jail. However, 20% of the offenders were sentenced to the maximum 12-month incarceration period for the offense; these offenders are frequently sentenced to the maximum, but may be released upon bringing their child support account up to date.

Convictions under this section are not currently covered by the sentencing guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

#### Background Sentencing Information

Misdemeanor Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local Responsible Sentence
Fail to comply with court-ordered child support (§ 16.1-278.16)	4,536	1.4%	97.9%	0.7%	6 months
Fail to comply with court order for spousal/child support (§ 16.1-292(B))	1,358	0.9%	98.7%	0.4%	6 months

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

**Impact of Proposed Legislation:**

The proposed legislation raises the penalty structure for an existing crime. Although, under current law, a person may be charged with a crime under § 16.1-278.16 after missing a payment, this rarely occurs. The Division of Child Support Enforcement of the Department of Social Services (DCSE) advises their "guide" to be a dollar amount at least an amount equivalent to three months of child support in arrears before the agency files a show cause motion. In practice, however, several factors impact the filing of such motions (e.g., the custodial parent who is not receiving the monies can influence the decision). Also, DCSE's normal practice regarding enforcement is to attempt all possible administrative remedies before going to the courts. Consequently, for those cases in which DCSE has filed a show cause motion, the support payments are generally at least six months in arrears or in excess of \$5,000. Thus, it is assumed that those convicted under the current misdemeanor provisions of § 16.1-278.16, are likely to have met the six-month criterion of the proposal.

Application of sentences for similar crimes indicates that the proposal would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, the net high state-responsible impact would be approximately 476 beds. This represents a minimum estimate of the impact because there may be persons cited for contempt under § 16.1-292(B) who will in the future also be charged with the proposed felony.

There will also be a reduced need for local-responsible (jail) bed space; based on the methodology, there will be a savings of approximately 107 jail beds statewide, for a savings to the state of \$1,249,693 (using FY2001 jail inmate costs) for reimbursement to localities. There would be an additional statewide savings for the localities of \$903,732 for the same beds.

The anticipated impact on community corrections programs is expected to be twofold. First, there may be a shift from local to state-funded programs. And second, on average, the need for a program placement will be delayed by about two months (the difference in time actually served for the current misdemeanor versus the time estimated to be served under the proposed felony). A third factor may impact community corrections programs; that is, the supervision for a felony crime may be longer than for the comparable crime when it was defined as a misdemeanor. For felony convictions for felony failure to appear under § 19.2-128 (the comparison offense), 42% had sentences that included supervised probation; of those, the supervision periods ranged from five months to an indefinite term of supervision, with a median of three years supervision.

Additionally, there may be an increased need for prison or jail bed space based on probation or post-release supervision revocations. A judge can impose and suspend more time for a felony than a misdemeanor, and, consequently, if an offender violates release conditions, the potential amount of time that a judge may re-impose for a revocation is longer as well. For felony convictions for felony failure to appear under § 19.2-128, all or part of the sentence was suspended in 62% of the cases; of those, the suspended time ranged from about 10 days to 37 years (nearly 40% had accompanying crimes at sentencing), with a median of three years suspended from the sentence.

No adjustment to the sentencing guidelines would be necessary under the proposal.

**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY03	FY04	FY05	FY06	FY07	FY08
7	213	385	441	461	476

**Estimated Six-Year Impact in Local-Responsible (Jail) Beds**

FY03	FY04	FY05	FY06	FY07	FY08
-7	-62	-79	-90	-100	-107

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$10,597,657 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the analysis include:****General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2002.
2. New cases representing misdemeanor and local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database.
3. Cost per prison bed was assumed to be \$22,286 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on the Compensation Board's FY2001 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$31.86 per day or \$11,637 per year. The local cost was calculated by using the daily expenditure cost of \$57.45 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$23.04 per day or \$8,415 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2003, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates for felony convictions were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2001; for non-violent offenses, this rate was 9.7%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants, sentenced in FY2000, with no accompanying felony conviction; this rate was 39.15%.
3. Sentences for persons affected by the felony provisions under the proposed legislation were randomly drawn from sentences for persons convicted under § 19.2-128 for felony failure to appear with no accompanying felony conviction.