



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 568

(Patron – Albo)

Date Submitted: 01/13/04

LD #: 04-7669204

Topic: Violation of court order regarding custody and visitation

Proposed Change:

The proposal amends § 18.2-49.1 of the *Code of Virginia* to increase the penalty for violating a custody or visitation order from a Class 3 to a Class 2 misdemeanor, while also raising penalties for subsequent offenses. For a second violation within 12 months, the proposal increases the penalty from a Class 2 to a Class 1 misdemeanor. For a third violation within 24 months, the proposal raises the penalty from a Class 1 misdemeanor to a Class 6 felony. The proposal adds an affirmative defense to this section if the act was committed (1) based on reasonable belief that the child was in danger of imminent physical harm, (2) with consent of all parties having right of custody or visitation, or (3) as otherwise authorized by law.

Data Analysis:

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, no offenders were held pre- or post-trial in local jails for any of the misdemeanor custody or visitation violations under § 18.2-49.1(B). Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, there were four convictions for felony violations of § 18.2-49.1(A) as the primary offense in a sentencing event. However, only one offender (25%) received state-responsible (prison) term, with a sentence of three years of imprisonment. The offender who received a prison term was also sentenced for another Class 6 felony for gross, wanton, or reckless care of a child in the same sentencing event.

Background Sentencing Information

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Holding child outside Commonwealth in violation of custody/visitation order (§ 18.2-49.1(A))	4	50%	25%	25%	3 yrs.

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database

Impact of Proposed Legislation:

The proposed legislation raises the penalties for violations of custody or visitation orders that are currently punishable as misdemeanors. Although the proposed changes to § 18.2-49.1(B) may

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

result in increased incarceration terms, databases are insufficient to determine the impact of the proposal.

Convictions under § 18.2-49.1(A) are covered by the sentencing guidelines as the primary (or most serious) offense. Convictions under § 18.2-49.1(B), as misdemeanors, are not 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. No adjustment to the sentencing guidelines would be necessary under the proposal.

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 and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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