



## Impact Analysis on Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 858

(Patron – Cosgrove)

Date Submitted: 01/13/04

LD #: 04-7267276

Topic: Violation of court order regarding custody and visitation

#### Proposed Change:

The proposal amends § 18.2-49.1(A) of the *Code of Virginia* to increase the penalty for holding a child outside Virginia in violation of a custody or visitation order from a Class 6 to a Class 5 felony. Amendments to § 18.2-49.1(B) 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.

In addition to the provisions of § 18.2-49.1(A), the act of a parent kidnapping a child and removing that child out of state currently is punishable as a Class 6 felony under § 18.2-47(B).

#### 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 a 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

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.

**Impact of Proposed Legislation:**

The proposed legislation raises the penalties for violations of custody or visitation orders. Although the proposed changes to § 18.2-49.1(B) may result in increased incarceration terms, databases are insufficient to determine the impact of that portion of the proposal. The impact of the proposed changes to § 18.2-49.1(A) can be quantified. Data indicate that few cases would be affected by changes to § 18.2-49.1(A). Application of sentences for a Class 5 felony version of a kidnapping (abduct by force without justification) 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 about five beds.

In addition, there will be an impact on local-responsible (jail) bed space. Based on the same methodology, there will be a decreased need for less than one bed statewide, for a cost savings to the state of \$1,015 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional savings for the localities of \$691.

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.

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

FY05	FY06	FY07	FY08	FY09	FY10
0	1	2	3	4	5

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$109,256 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 2003.
2. New cases representing state-responsible sentences were based on forecasts approved by the Secretary's Committee on Inmate Forecasting in August 2003.
3. Cost per prison bed was assumed to be \$22,606 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 FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 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 \$20.29 per day or \$7,410 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, 2004, is phased in to account for case processing time.

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2. Release dates for state-responsible 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, 2002. For kidnapping offenses, this rate was 90.9%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%.
3. Sentences for persons convicted of holding a child outside of Virginia in violation of a custody or visitation order were assumed to be affected by the proposal. To estimate the impact on these offenders, sentences were randomly drawn from sentences for the crime of kidnapping by force without justification (§ 18.2-47(A)), a Class 5 felony. Given that these offenders, under the proposal, would be guilty of a Class 5 felony for holding a child outside Virginia in violation of a custody or visitation order and under current law had been sentenced to incarceration, the projected sentence was applied only if it exceeded the actual sentence in the case.

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