



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 301

(Patron – Cuccinelli)

LD #: 06-1199720

Date: 12/12/2005

Topic: Violation of court order regarding custody and visitation

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends § 18.2-49.1, relating to violation of a court order regarding custody and visitation. Currently, a person may be charged for violation of a court order regarding custody and visitation if the person “knowingly, wrongfully and intentionally” withholds a child from his parents or legal guardian outside of the Commonwealth in a “clear and significant violation” of a court order. The proposal removes from subsection (A) of § 18.2-49.1 both the need to prove intent and the requirement that the violation be significant.

In addition, the proposal amends subsection (B) to specify that it is unlawful for any person to knowingly and wrongfully withhold a child from his parents or legal guardian within the state of Virginia. The current statute requires the person to intentionally engage in conduct that constitutes a clear and significant violation of a court order, but does not specify the element of withholding the child.

Currently, under § 18.2-49.1(A), it is a Class 6 felony for a person to violate a court order regarding custody and visitation by withholding a child outside of the Commonwealth. When the child is withheld within the state of Virginia in violation of § 18.2-49.1(B), a first offense is punishable as a Class 3 misdemeanor with a fine only; a second violation within 12 months of the first is punishable as a Class 2 misdemeanor with a maximum jail sentence of six months; and a third violation within 24 months of the first is punishable as a Class 1 misdemeanor with a maximum jail sentence of 12 months. The proposal does not change the penalty structure for violation of court order under § 18.2-49.1.

Analysis:

According to the Pre-Sentence Investigation (PSI) database for fiscal year (FY) 2002 and FY2003, there were eight convictions for a felony violation of § 18.2-49.1. A majority of the offenders (75%) received no active term of incarceration. Of the two offenders that did receive active incarceration, one was sentenced to 12 months in jail, and the other was sentenced to 24 months in prison.

According to the Local Inmates Data System (LIDS) data for FY2003 and FY2004, there were three offenders held pre- or post-trial for misdemeanor convictions of § 18.2-49.1 as the most serious offense at conviction. All three offenders were convicted of a second violation under § 18.2-49.1 with a median local responsible sentence of .33 months active incarceration. There were no convictions during the time period for a third violation of court order under § 18.2-49.1, and a first conviction is a fine only offense.

Impact of Proposed Legislation:

State adult correctional facilities. By removing certain elements necessary for prosecution under § 18.2-49.1, the proposed legislation may broaden the applicability of violations of court orders regarding custody and visitation. In this respect, the proposed legislation may have an impact on state-responsible (prison) bed space needs in the Commonwealth; however, the potential impact cannot be determined.

Local adult correctional facilities. Similarly, the proposed legislation may increase the local-responsible (jail) bed space needs of the Commonwealth; however, the magnitude of the potential impact cannot be determined.

Adult community corrections programs. Because the proposal may result in additional offenders placed on community supervision (or lengthier supervision periods for offenders already in the community), the proposal may have an impact on community corrections resources. The potential impact on adult community corrections cannot be determined.

Virginia's sentencing guidelines. Convictions for violation of court orders pertaining to custody and visitation are not covered by the sentencing guidelines as the primary (or most serious) offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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

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