



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 667
As Engrossed
(Patron Prior to Engrossment – Garrett)

LD#: 12103721

Date: 2/23/2012

Topic: Child endangerment

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposal amends §§ 8.01-226.5:2, 40.1-103, and 63.2-1530 and adds § 18.2-371.1:1, relating to cruelty and injuries to children, to the *Code*. The proposal relocates the language of § 40.1-103 to the proposed § 18.2-371.1:1, modifies references to § 40.1-103 to reflect the new section, and retains a reference to the new section under Title 40.1. The proposal also removes language that was invalidated for vagueness in 1995 (*Commonwealth v. Carter*, 1995). In addition, the proposal replaces “willfully or negligently” with “by willful act or omission that is so gross, wanton, and culpable as to show a reckless disregard for human life.” As a result, this provision of the proposed § 18.2-371.1:1 more closely mirrors language in § 18.2-371.1(B)(1), which contains a similar prohibition. Criminal negligence, as used in the existing § 40.1-103, is “a recklessness or indifference incompatible with a proper regard for human life” (*Mosby v. Commonwealth*, 1996, quoting *Bell v. Commonwealth*, 1938). As a result, the proposed modification does not appear to expand existing law. As in the existing *Code*, the proposal retains the Class 6 felony penalty and an affirmative defense to prosecution when a parent safely leaves a child at a hospital or rescue squad.

Currently, under § 18.2-371.1(A), it is a Class 4 felony for any parent, guardian, etc., either by willful act or omission, to cause or permit serious injury to a child. Under § 18.2-371.1(B)(1), a parent, guardian, or other caretaker whose willful act or omission in the care of a child was so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class 6 felony.

Analysis:

The Circuit Court Automated Information System (CAIS) database for fiscal years 2010 and 2011 indicates that 60 offenders were convicted of a felony for child endangerment under § 40.1-103. The child endangerment felony was the most serious offense in 35 of the cases. Of the 35 cases, most received some period of incarceration. Slightly more than one-third (34.3%) of the offenders were sentenced to a local-responsible (jail) term, with a median sentence of 2.5 months; an additional 28.6%

received a state-responsible (prison) term, with a median sentence of roughly two years. The remaining 37.1% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed modifications to the *Code* do not appear to expand the applicability of existing law or modify the current penalty structure. As a result, the proposal is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, the proposal is not expected to increase the local-responsible (jail) bed space needs of the Commonwealth.

Adult community corrections programs. The proposal is not expected to increase the need for adult community corrections resources.

Virginia's sentencing guidelines. Sentencing guidelines cover current violations of § 40.1-103 and would cover the same offense identified under the proposed § 18.2-371.1:1. No adjustment to the guidelines would be necessary under the proposal.

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

Juvenile detention facilities. The Department of Juvenile Justice 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 is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

child17_3721