



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 411

Amendment in the Nature of a Substitute (Patron Prior to Substitute – McWaters)

LD#: 14104305

Date: 1/22/2014

Topic: Abuse and neglect of a child

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-371.1:1, relating to abandoning a child, to the *Code of Virginia*. Under the proposal, any parent or legal guardian who transfers physical custody of a child with the intent to permanently transfer physical and legal custody of the child to another without following established adoption procedures would be guilty of a Class 6 felony. The proposed statute creates an exception for kinship care arrangements for the purposes of school enrollment or other established legal procedures for transferring custody.

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), a parent, guardian, etc., 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. Section 18.2-371.1(B)(2) provides for an affirmative defense for parents who safely deliver a child to a hospital or rescue squad within the first 14 days of the child's life.

Analysis:

Available data do not contain sufficient detail to determine the number of cases that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted under § 18.2-371.1(B).

According to Sentencing Guidelines data for fiscal year (FY) 2012 and FY2013, 440 offenders were convicted of a Class 6 felony under § 18.2-371.1(B) for gross, wanton or reckless care of a child. This was the primary, or most serious, offense in 239 cases. Of these, over a third (38%) did not receive an

active term of incarceration to serve after sentencing. An additional 46% received a local-responsible (jail) term, with a median sentence of three months. The remaining 16% were sentenced to a state-responsible (prison) term; the median sentence for these offenders was 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a new Class 6 felony offense for a parent or guardian who abandons a child, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Data do not contain sufficient detail to estimate the number of additional felony convictions that would result from the proposal; therefore, the magnitude of the impact on prison beds cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections programs cannot be quantified.

Virginia's sentencing guidelines. As a new crime in the *Code of Virginia*, the proposed felony would not be covered by the sentencing guidelines as the primary (most serious) offense. A conviction for such an offense, however, may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice reports that the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space needs cannot be determined.

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; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

child02_4305