



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 673 ***(Patron – Mullin)***

LD#: 20101936

Date: 12/18/2019

Topic: Cruelty to children

Fiscal Impact Summary:

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

- **Juvenile Direct Care:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal repeals § 40.1-103 and moves the provisions criminalizing cruelty and injuries to children from Title 40.1 (Labor and Employment) to Title 18.2 (Crimes and Offenses Generally) by adding § 18.2-371.1:1. In addition, the proposal increases the penalty from a Class 6 felony to a Class 4 felony for any person employing or having custody of a child who willfully causes or permits such child to be tortured physically or psychologically, tormented, mutilated, beaten, or cruelly treated. As proposed, the penalty for other acts of cruelty and injuries to children, as currently defined in § 40.1-103, would remain a Class 6 felony.

As proposed, if such an act of cruelty to a child is in conjunction with a homicide, § 9.1-902 of the *Code* would be modified to require registration under the Sex Offender and Crimes Against Minors Registry Act. Violations of § 18.2-371.1:1 would be defined by § 17.1-805 as violent offenses for purposes of determining felony sentencing guidelines. The proposal would amend § 19.2-391.02 to define violations of the statute as “barrier crimes” for offenders seeking employment or volunteering to provide care to children, elderly or the disabled. Violations of the proposed statute would be reported, as required by § 63.2-1530, to the Virginia Child Protection Accountability System. The amendment to § 63.2-1727 would include willful and negligent acts of cruelty and injuries to children in the list of offenses prohibiting a person from operating or residing in a family day home. Other amendments are made to replace references to § 40.1-103 with the proposed statute.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who could be convicted of willfully causing a child to be tortured, tormented, mutilated, beaten or cruelly treated. As proposed, the penalty would be increased to a Class 4 felony.

Sentencing Guidelines data for fiscal year (FY) 2018 and FY 2019 indicate that there were 136 offenders convicted of cruelty to children under the current statute, § 40.1-103. This offense was the primary, or most serious, offense in 69 of the cases. Of these, 17.4% received a state-responsible (prison) term with a median sentence of 1.4 years. Another 43.5% of offenders received a local-responsible (jail) term with a median sentence length of three months. The remaining 39.1% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalty for individuals who willfully commit an act of child cruelty, currently covered by an existing statute, the proposal could increase the length of sentence imposed and, thus, increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data do not contain sufficient detail to estimate the number of individuals likely to be affected by the proposal. Therefore, the magnitude of the impact cannot be determined.

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

Adult community corrections resources. The impact on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's sentencing guidelines. Convictions under the current § 40.1-103 are currently covered by the sentencing guidelines. The guidelines would continue to cover the Class 6 felonies moved from § 40.1-103 to the proposed § 18.2-371.1:1. However, the new Class 4 felony defined in the proposal would not be covered by the guidelines. Such a conviction could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. The Commission will monitor sentencing patterns after enactment to determine if revisions to the guidelines are needed to accurately reflect judicial sentencing patterns.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities 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 854 of the 2019 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.