



## Impact Analysis on Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 2337 (Patron – Gilbert)

**LD#:** 07-4397306

**Date:** 12/20/2006

**Topic:** Ingestion of drugs by pregnant women as child abuse

#### 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:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

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#### Summary of Proposed Legislation:

The proposal amends § 18.2-371.1 by making it a Class 6 felony for any pregnant female to intentionally ingest a Schedule I/II drug without a prescription or, if prescribed for her, in a manner inconsistent with the prescription. Furthermore, under the proposal, presence in the female's bloodstream of an illegal Schedule I/II drug, or a legal Schedule I/II drug in a quantity inconsistent with her prescription, would raise an inference that the substance was ingested intentionally.

Currently, under § 18.2-371.1, child abuse and neglect is a Class 6 felony. If such abuse results in serious injury to the child, it is a Class 4 felony.

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#### Analysis:

According to the calendar year (CY) 2004 and CY2005 Local Inmate Data System (LIDS), 77 offenders held pre- or post-trial in jail were convicted of a Class 6 felony under § 18.2-371.1 for gross, wanton, or reckless care for child. The majority of these offenders received an active term of incarceration. Nearly half (46%) were given a local responsible (jail) term for which the median sentence was two months. Nearly one-third (31%) received a state responsible (prison) term; for offenders committed to prison, the median sentence was 1.6 years.

Based on Sentencing Guidelines (SG) data for fiscal years (FY) 2005 and FY2006, there were 100 convictions for abuse and neglect of children under § 18.2-371.1 resulting in serious injury (Class 4 felony). Of these, 30% were given a local-responsible (jail) term, while 46% were sentenced to a state-responsible (prison) term. For offenders sent to prison, the median sentence was two years.

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#### Impact of Proposed Legislation:

**State adult correctional facilities.** Because it creates a new felony offense, the proposal may have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. However, existing

databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. Therefore, the magnitude of the impact cannot be quantified.

**Local adult correctional facilities.** Because a felony conviction can result in a sentence to be served in a local or regional jail, the proposal may have an impact on future local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined with existing data.

**Adult community corrections resources.** Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, it may increase the need for adult community corrections resources. The potential impact on community corrections resources cannot be quantified.

**Virginia's sentencing guidelines.** Abuse and neglect of a child resulting in serious injury is covered by the sentencing guidelines as the primary (most serious) offense at conviction. As a newly-defined felony crime, the proposed offense would not be covered by the guidelines if it is the primary offense in a case; however, convictions for the proposed crime may augment the guidelines recommendation if a covered offense is the most serious at conviction.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional centers cannot be quantified.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal's impact on juvenile detention facilities cannot be determined.

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**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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