



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1033

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

LD #: 10105973

Date: 3/8/2010

Topic: Murder, abuse and neglect of infants

Fiscal Impact Summary:

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

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 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 § 18.2-36.3 to clarify that the determination of an independent and separate existence of a human infant from its mother shall not be conditioned solely upon whether or not the umbilical cord has been cut or the placenta detached. This language would only apply to the criminal homicide statutes (§§ 18.2-30 through 18.2-37) and child abuse and neglect (§ 18.2-371.1).

The second enactment clause states “That the provisions of this act are declarative of existing law.”

Analysis:

The proposal applies to all criminal homicide statutes (§§ 18.2-30 through 18.2-37) and child abuse and neglect (§ 18.2-371.1). Sentencing information for these offenses is provided below.

Pre/Post-Sentence Investigation (PSI) data for fiscal year (FY) 2007 and FY2008 indicate that 45 offenders were convicted of capital murder under § 18.2-31 during this time period. Of these cases, 23 were convicted of attempted, conspired or completed capital murder of a law enforcement officer, judge, pregnant victim, or witness. Since these subsections would not be affected by the proposal, due to the requisite status of the victim, cases where these convictions were the primary offense were excluded. Of the remaining 22 offenders, one did not receive an active term of incarceration (this offender was convicted of conspiracy to commit murder for hire). The median sentence length for the 18 offenders who were sentenced to a state-responsible (prison) term was 33.5 years. Three of the 22 offenders were sentenced to death.

The Sentencing Guidelines database for FY2008 and FY2009 indicates that first-degree murder was the most serious offense in 170 cases during the two-year period. Nearly all of the offenders (99%)

received a state-responsible (prison) term, for which the median sentence was 25 years. During the same two-year period, second degree murder was the most serious offense in 142 cases. Nearly all of the offenders (99%) were committed to prison; the median sentence in these cases was 20 years. Another 10 offenders were convicted of felony murder in violation of § 18.2-33 during this time period. The murder was the primary, or most serious, offense in eight of these cases. All of the offenders were sentenced to a state-responsible (prison) term; the median prison sentence was 12.8 years.

In addition, 50 offenders were convicted of voluntary manslaughter under § 18.2-35 during this time period. Voluntary manslaughter was the most serious offense in all but one of these cases. More than 90% of these offenders were given a prison term with a median sentence length of 5.2 years. Of the 128 offenders whose most serious offense was involuntary manslaughter under §§ 18.2-36 or 18.2-36.1, the majority (72%) were given a state-responsible term resulting in a median sentence of 3.5 years.

Data from the fiscal year (FY) 2008 and FY2009 Sentencing Guidelines database indicate that 328 individuals were convicted of a felony violation of § 18.2-371.1 for child abuse or neglect resulting in serious injury or gross, wanton, or reckless care for a child. This violation was the primary offense in 172 of these cases. Of the 172 cases, 42% received a local-responsible (jail) sentence, with a median sentence length of four months. For the 23% who were given a state-responsible (prison) term, the median sentence was two years.

Impact of Proposed Legislation:

State adult correctional facilities. Despite the second enactment clause, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated. While the magnitude of the impact cannot be quantified, it is likely to be small.

Local adult correctional facilities. If the proposal is passed, the number of individuals who would be eligible for incarceration in local adult correctional facilities could increase the local-responsible (jail) bed space needs of the Commonwealth. While the magnitude of the impact cannot be quantified, it is likely to be small.

Adult community corrections programs. Because the proposal could result in 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 resources cannot be quantified.

Virginia's sentencing guidelines. Several of the offenses listed in the criminal homicide statutes (§§ 18.2-30 through 18.2-37) and both of the offenses in § 18.2-371.1 are covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

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

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

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 781 of the 2009 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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