



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1996 (Patron – Janis)

LD#: 11103097

Date: 1/10/2011

Topic: Abuse and neglect of 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 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 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-371.1, related to child abuse and neglect, to establish penalties within the statute for malicious acts.

Currently, under § 18.2-371.1, it is a Class 4 felony for any person responsible for the care of a minor to willfully, or through omission or refusal to provide care, cause or permit serious injury to a child.

Under the proposal, the penalty for this offense, if committed maliciously, would increase to a Class 3 felony, punishable by imprisonment of 5 to 20 years. However, if child is under the age of 15 and the offender is at least 7 years older than the child, the penalty for a malicious violation would be further increased to a range of 5 to 30 years, 5 years of which must be a mandatory minimum sentence. For a second or subsequent malicious violation involving a child under the age of 15 and an offender at least 7 years older than the child, the penalty would increase to a range of 10 to 40 years, with a 10-year mandatory minimum sentence required.

Under existing *Code*, malicious injury is a Class 3 felony (§ 18.2-51); however, the current provision does not contain any penalty enhancements or mandatory minimum sentences based on the ages of the victim or the offender or for subsequent violations.

Analysis:

According to fiscal year (FY) 2009 and FY2010 Sentencing Guidelines (SG) data, 81 offenders were convicted of a Class 4 felony under § 18.2-371.1 for child abuse or neglect resulting in serious injury to the child. Nearly half (46%) of the offenders were given a state-responsible (prison) term, for which the median sentence was 2.5 years. Nearly 36% received a local-responsible (jail) term with median sentence of three months. The remaining 18% did not receive an active term of incarceration.

Available data are insufficiently detailed to determine how many of these offenses were committed maliciously or how many involved a child under the age of 15.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalty for certain acts of child abuse and creating new mandatory minimum sentences, the proposal may have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to determine the number of cases that would be affected by the proposal; therefore, the magnitude of the impact on prison beds cannot be quantified.

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

Adult community corrections programs. Because the proposal will not result in additional felony convictions, it is not expected to increase the need for adult community corrections resources.

Virginia's sentencing guidelines. The sentencing guidelines cover felony violations of §§ 18.2-371.1 and 40.1-103 that are processed in Virginia's circuit courts. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) 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 874 of the 2010 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.

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