Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 6

(Patron – Howell)

LD#: 12100028 **Date:** 7/14/2011

Topic: Failure to report a dead child

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $0
- **Local Adult Correctional Facilities:** $0
- **Adult Community Corrections Programs:** $0
- **Juvenile Correctional Centers:** Cannot be determined
- **Juvenile Detention Facilities:** Cannot be determined

Summary of Proposed Legislation:

The proposal adds § 18.2-323.03 related to failure to report the death of a child. Under the proposal, a parent, guardian, or legal custodian of a child who, with intent to conceal the death, fails to report the death of the child within one hour of discovery of the death would be guilty of a Class 6 felony. Unless the child was in the care of a health care provider, the parent, guardian, etc., would be required to report the death to local law enforcement, State Police, or an emergency health care provider.

Currently, under § 18.2-323.02, it is a Class 6 felony for any person to transport, secrete, conceal or alter a dead body with malicious intent and to prevent detection of an unlawful act or to prevent detection of the death or the manner or cause of death. Additionally, under § 18.2-323.01, it is a Class 1 misdemeanor to illegally dispose of a dead body on public or private property.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years (FY) 2010 and 2011, there were six offenders convicted of concealing a dead body under § 18.2-323.02 as the primary, or most serious, offense in the sentencing event. Two offenders received no active incarceration and four received a state-responsible (prison) term; one of the prison cases received one year of active incarceration and the remaining three received the maximum penalty of five years for the offense. Pre-Sentence Investigation (PSI) data for the same time period reveal that none of these cases involved concealing the dead body of a child.

According to fiscal year (FY) 2009 and FY2010 data from the General District Court Automated Information System (CAIS), there were three offenders convicted of a Class 1 misdemeanor for illegally disposing of a dead body on public or private property under § 18.2-323.01. One offender was given no active term of incarceration. Two offenders were given a local-responsible (jail) term of three months

and 12.1 months, respectively. Criminal justice databases are insufficient to determine whether the victims in these cases were children.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal defines a new Class 6 felony; however, it is likely that such crimes could be prosecuted currently under the existing Class 6 felony provision defined in § 18.2-323.02. There have only been six felony convictions during a recent two-year period under the existing provision (§ 18.2-323.02) and none of the cases involved the death of a child. The proposal is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, the proposal is not expected to increase the local-responsible (jail) bed space needs of the Commonwealth.

Adult community corrections programs. The proposal is not expected to increase the need for adult community corrections resources.

Virginia's sentencing guidelines. Because the proposed felony would be a new offense in the *Code of Virginia*, sentencing guidelines would not cover felony violations of § 18.2-323.03 that would be processed in Virginia's circuit courts. However, convictions for any of these crimes may augment the guidelines recommendation if a covered offense is the most serious at sentencing. 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 is $0 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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