



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 66 *(Patron – Stanley)*

LD#: 12100713

Date: 12/19/2011

Topic: Abuse and neglect of a child

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 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal expands § 18.2-371.1, related to abuse and neglect of children, to make it a Class 6 felony for a parent, guardian, etc., to falsely report to law enforcement the circumstances of an accident or other occurrence that results in serious injury to the life or health of a child under the age of 12.

The proposal also states that any parent, guardian, etc., who, with intent to conceal the fact that a child under the age of 12 is missing, fails to report the child as missing within 12 hours of discovering it would be guilty of a Class 6 felony.

Currently, under § 18.2-371.1(A), it is a Class 4 felony for any parent, guardian, etc., either by willful act or omission, to cause or permit serious injury to a child. Under § 18.2-371.1(B), a parent, guardian, etc., whose willful act or omission in the care of a child was so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class 6 felony.

Analysis:

According to the Sentencing Guidelines data system for fiscal years (FY) 2010 and 2011, there were 97 offenders convicted of a Class 4 felony under § 18.2-371.1(A) for child abuse and neglect resulting in serious injury. In these cases, child abuse was the primary (or most serious) offense in the sentencing event. Nearly half (45%) of the offenders received a state-responsible (prison) term, for which the median sentence was two years. One-third (34%) of the offenders were given a local-responsible (jail) term with a median sentence of four months. The remaining offenders (21%) did not receive an active term of incarceration to serve.

In addition, 260 offenders were convicted of a Class 6 felony under § 18.2-371.1(B) for gross or reckless care of a child (as the primary offense). Roughly half (47%) of the offenders were given probation

without an active term of incarceration, while another 44% received a jail term (median sentence of three months). Few offenders convicted of this crime (10%) were sentenced to a state prison term; the median sentence for these offenders was 1.4 years.

Existing data are insufficient to identify the number of incidents in which a parent or guardian falsely reports the nature of a child's injury or who fails to report a child missing within 12 hours.

Impact of Proposed Legislation:

State adult correctional facilities. By defining two new Class 6 felony offenses, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Data are not available to estimate the number of additional felony convictions that would result from the proposal; therefore, the magnitude of the impact on prison beds cannot be determined.

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

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

Virginia's sentencing guidelines. As new crimes in the *Code of Virginia*, the proposed felonies would not be covered by the sentencing guidelines as the primary (most serious) offense. A conviction for such an offense, however, may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. It is possible that a person under the age of 18 could be a parent and subject to the provisions of the proposed legislation. In such an event, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code*. Therefore, the legislative proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. It is possible that a person under the age of 18 could be a parent and subject to the provisions of the proposed legislation. In such an event, the person could be subject to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1. In addition, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for post-dispositional detention under § 16.1-284.1. While the legislative proposal may have an impact on juvenile detention bed space needs, the actual impact on 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 890 of the 2011 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.