



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1189

(Patron – Hester)

LD #: 16104066

Date: 1/15/2016

Topic: Unlicensed child welfare agencies

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**

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal modifies § 63.2-1712, relating to the licensure and operation of certain programs. Under the proposal, any person who operates a child welfare agency without first obtaining a license would be guilty of a Class 4 felony if the operator's negligence causes the death or serious bodily injury of a child in their care. The proposal would use the definition of "serious bodily injury" contained in § 16.1-283, which includes bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the functions of a bodily member, organ or mental faculty. The proposed Class 4 felony would also apply to each officer and member of the governing board of an association or corporation.

Some of the circumstances covered by the proposal may overlap with existing felony offenses. For instance, under § 18.2-371.1(A), any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child is guilty of a Class 4 felony. "Serious injury" under this subsection includes but is not limited to disfigurement, a fracture, a severe burn or laceration, mutilation, maiming, forced ingestion of dangerous substances, and life-threatening internal injuries.

In addition, the proposed § 63.2-1712(B) may overlap with involuntary manslaughter (§ 18.2-36) in some instances. This offense is defined under common law as the accidental killing of a person, contrary to the intention of the parties, during the prosecution of an unlawful, but not felonious act, or during the improper performance of some lawful act (see, e.g., *Gooden v. Commonwealth*, 226 Va. 565, 571, 311 S.E.2d 780, 784 (1984)). As a result, an unlicensed operator whose negligence causes the death of a child may potentially be convicted of involuntary manslaughter under § 18.2-36, depending on the facts of the case.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2010 through FY2015, four offenders were convicted of a Class 1 misdemeanor under § 63.2-1712(3) for operating an assisted living facility, adult day care center, or child welfare agency without a license. This offense was the primary, or most serious, offense in three of the cases. None of these offenders received a sentence of incarceration. One additional offender had a primary offense of uttering a forged public record under § 18.2-168.

General District Court CMS data for FY2010 through FY2015 indicate that two offenders were convicted of a misdemeanor under § 63.2-1712(3) for operating a child welfare agency, etc., without a license. Both offenders were sentenced to a local-responsible (jail) term, one for eight months and the other for one month.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal creates a new Class 4 felony for operators of unlicensed child welfare agencies whose negligence results in the death or serious bodily injury of a child in their care. If the proposal applies to circumstances beyond those that may currently be prosecuted as a Class 4 felony under § 18.2-371.1(A), the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing data sources do not provide sufficient detail to estimate the number of additional felony convictions, or potentially longer sentences, that may result from enactment of the proposal; therefore, the magnitude of the impact on prison bed space needs cannot be determined.

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

Adult community corrections programs. Should the proposal result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia’s sentencing guidelines. As a new felony, convictions under the proposed § 63.2-1712(B) would not be covered by the sentencing guidelines when this crime is the primary (most serious) offense. A conviction for such an offense, however, could 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. 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 665 of the 2015 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.