



## Fiscal Impact Statement for Proposed Legislation

---

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1368 (Patron – DeSteph)

LD#: 21102037

Date: 12/8/2020

Topic: Withholding child from contact with other parent

#### Fiscal Impact Summary:

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

- **Juvenile Direct Care:**  
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 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

---

#### Summary of Proposed Legislation:

The proposal modifies § 18.2-371.1, relating to the abuse and neglect of children, to establish a new felony offense. Specifically, under the proposal, any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission interferes with such child's contact and relationship with the other parent, guardian, or other person responsible for the care of such child, including unreasonably denying the other parent, guardian, or other person responsible for the care of such child access to or visitation with such child, 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 the life or health of 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. Under § 18.2-47(D), it is a Class 1 misdemeanor for a parent to abduct his or her child without legal justification and with intent to deny the child his personal liberty or to withhold or conceal the child from any person, authority or institution lawfully entitled to his charge; the penalty is raised to a Class 6 felony if the parent takes the child out of the Commonwealth.

---

## **Analysis:**

Existing data sources do not contain sufficient detail to identify the number of individuals who would be convicted of a felony for interfering with a child's contact and relationship with another parent, guardian, or person responsible for the care of such child. However, data from the Juvenile & Domestic Relations (JDR) Court Case Management System (CMS) indicate that, in fiscal year (FY) 2019 and FY2020, 24 individuals were convicted of a Class 1 misdemeanor under § 18.2-47(D) for abducting a child with intent to deny the child his personal liberty or to withhold the child from a person, authority or institution entitled to the child. Just over one-third (37.5%) of these defendants received a local-responsible (jail) term, for which the median sentence was 1.6 months.

If the proposal were enacted, affected offenders may be sentenced similarly to those who are currently convicted of the Class 6 felony under the subsection D of § 18.2-47 (kidnapping by parent, removing from state) or subsection A of § 18.2-49.1 (child held outside Virginia, in violation of custody/visitation order). Sentencing Guidelines data for fiscal year (FY) 2019 and FY2020 indicate that there were 13 offenders convicted of one of the aforementioned felonies under § 18.2-47(D) or § 18.2-49.1(A). This was the primary, or most serious, offense in 12 of the cases. Of these, four (33.3%) offenders received a local-responsible (jail) term with a median sentence of four months. The remaining eight (66.7%) did not receive an active term of incarceration to serve after sentencing.

---

## **Impact of Proposed Legislation:**

**State adult correctional facilities.**<sup>1</sup> By establishing a new Class 6 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data do not contain sufficient detail to estimate the number of individuals likely to be affected by the proposal. Therefore, the magnitude of the impact cannot be determined.

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

**Adult community corrections resources.** The impact on state community corrections resources and local community-based probation services cannot be estimated.

**Virginia's sentencing guidelines.** Convictions under the current § 18.2-371.1 are currently covered by the sentencing guidelines. However, the new Class 6 felony defined in the proposal would not be covered by the guidelines. Such a conviction could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. The Commission will monitor sentencing patterns after enactment to determine if it is feasible to add the proposed Class 6 felony offense to the guidelines.

**Juvenile direct care.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 1289 of the Acts**

---

<sup>1</sup> Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

**of Assembly of 2020 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.**

child01\_2037