



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1274 (Patron – Freitas)

LD #: 22103698

Date: 01/06/2022

Topic: Pain-Capable Unborn Child Protection Act

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 552 of the Acts of Assembly of 2021, Special Session I, 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 adds § 18.2-76.3 through 18.2-76.10 relating to abortion and establishes the Pain-Capable Unborn Child Protection Act. The Act prohibits an abortion after 20 weeks gestation unless certain criteria are met. When an abortion is not prohibited post-20 weeks' gestation, the physician or authorized nurse practitioner is required to terminate the pregnancy in a manner that would provide the unborn child the best opportunity to survive.

Under § 18.2-76.7, any person who intentionally or recklessly performs or induces or attempts to perform or induce an abortion that violates the provisions of the Act is guilty of a Class 6 felony.

In addition, under § 18.2-76.6, any person who intentionally or recklessly falsifies any report to the Department of Health on the performance, inducement, or attempt to perform or induce an abortion is guilty of a Class 1 misdemeanor.

Currently, under §§ 18.2-71 and 18.2-71.1, unlawfully producing an abortion or performing partial birth infanticide are Class 4 felonies. It is a Class 3 misdemeanor under § 18.2-76.1 to encourage, promote or advertise any prohibited abortion procedures. Violations related to consent for abortions are punishable as Class 3 misdemeanors under § 16.1-241.

Analysis:

According to data from the General District Court and Circuit Court Case Management Systems (CMS) for fiscal year (FY) 2016 through FY2021, there were no convictions under the existing abortion-related statutes of §§ 18.2-71, 18.2-71.1, 18.2-76.1 or 16.1-241 during that time period.

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Therefore, the impact of the proposal on prison bed space needs 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. The Sentencing Guidelines do not currently cover abortion law violations as the primary (most serious) offense in a sentencing event. However, a conviction for an abortion-related crime (as an additional offense) 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 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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.