



Fiscal Impact Statement for Proposed Legislation
Virginia Criminal Sentencing Commission

Senate Bill No. 499
Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Carroll Foy)

LD#: 24107422

Date: 02/13/2024

Topic: Donor human milk banks

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: \$50,000* • Local Adult Correctional Facilities: Cannot be determined • Adult Community Corrections Programs: Cannot be determined 	<ul style="list-style-type: none"> • Juvenile Direct Care: Cannot be determined ** • Juvenile Detention Facilities: Cannot be determined ** <p>** Provided by the Department of Juvenile Justice</p>
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* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, 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 proposed legislation amends §§ 2.2-2818, 32.1-325 and 38.2-4319 and adds several sections to the *Code of Virginia* relating to donor human milk banks. The proposal prohibits any person from establishing or operating a donor human milk bank without first obtaining a license from the Department of Health; a violation of this section would be a Class 6 felony.¹ The bill directs the Department to establish criteria for the licensure of donor human milk banks and to promulgate regulations by July 1, 2025, that prohibit activities of donor human milk banks that do not meet the licensing standards and requirements.

Existing databases do not provide sufficient detail to identify the number of new convictions likely to result from enactment of the proposal. However, offenders convicted of the new felony offense may be sentenced similarly to those convicted of certain existing Class 6 felonies. For instance, under § 54.1-111, it is unlawful for any person, partnership, or other entity to practice a profession or occupation without holding a valid license as required by statute or regulation; a third or subsequent conviction for violating this section during a 36-month period is punishable as a Class 6 felony. Under § 54.1-2409.1, any person who, without holding a current valid license, (i) performs an invasive procedure for which a license is required; (ii) administers, sells, or dispenses a controlled drug; or (iii) practices a profession or occupation after having his license suspended or revoked is guilty of a Class 6 felony.

¹ The proposed felony would be eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will serve a minimum of 67% of the sentence ordered by the court.

Analysis:

According to Circuit Court Case Management System (CMS) data for FY2013-FY2023, 26 offenders were convicted of Class 6 felony violations of §§ 54.1-111 or 54.1-2409.1. For 15 offenders, this offense was their primary (most serious) offense at sentencing. Of these, 46.7% were sentenced to local-responsible (jail) terms with a median sentence of 1.5 months. The remaining offenders (53.3%) did not receive an active term of incarceration to serve after sentencing. For the eight offenders whose primary offense was a violation of § 54.1-2409.1, two offenders (25.0%) received jail terms of, respectively, 1.5 months and five months. The remaining six offenders (75.0%) did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a new Class 6 felony for which imprisonment is authorized, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide sufficient detail to estimate the number of new felony convictions that may result from the proposal; therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions resulting from the proposal cannot be determined, the magnitude of the impact on jail beds cannot be estimated.

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

Virginia's Sentencing Guidelines. The proposed Class 6 felony would not be covered by the Guidelines as the most serious offense. A conviction for this crime, however, could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. The proposed felony would not be defined as violent under § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the Guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, 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 1 of the Acts of Assembly of 2023, Special Session I, 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.