



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 983 (Patron – Scott, P.A.)

LD #: 22103685

Date: 01/06/2022

Topic: Provision of abortion on the basis of a genetic disorder, sex, or ethnicity

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 (likely negligible) **
 - **Juvenile Detention Facilities:**
Cannot be determined (likely negligible) **
- ** 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 amends and reenacts §§ 16.1-77, 18.2-72, 18.2-76, and 32.1-127 of the Code of Virginia and adds a section numbered 18.2-71.2 relating to provision of abortion on the basis of genetic disorder, the sex, or the ethnicity of the unborn child.

Under § 18.2-71.2, the proposal makes any person subject to a Class 4 felony if they intentionally perform an abortion with knowledge that the abortion is sought solely and exclusively on account of a genetic disorder, the sex, or the ethnicity of the unborn child.

The proposal also removes from the list of persons who can perform first trimester abortions any person jointly licensed by the Board of Medicine and Nursing as a nurse practitioner acting within such person's scope of practice. The proposal further adds procedures and processes, including the performance of an ultrasound, required to affect a pregnant person's informed written consent to the performance of an abortion. Under the proposal, any physician who fails to comply with the provisions shall be subject to a \$2,500 civil penalty.

In addition, the proposal adds language classifying facilities that perform five or more first trimester abortions per month as hospitals for the purpose of complying with regulations establishing minimum standards for hospitals.

Currently, under §§ 18.2-71 and 18.2-71.1, unlawfully producing an abortion or performing partial birth infanticide are Class 4 felonies.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of additional individuals who, if the proposal were enacted, would be convicted of a Class 4 felony for intentionally performing an abortion with knowledge that the abortion is sought solely and exclusively on account of a genetic disorder of the unborn child.

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.