



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### Senate Bill No. 122 (Patron – Obenshain)

**LD#:** 22103058

**Date:** 12/6/2021

**Topic:** Killing the fetus of another

#### **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.

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#### **Summary of Proposed Legislation:**

The proposal amends and reenacts § 18.2-32.2, relating to killing of the fetus of another and related penalties. Under the amended and reenacted § 18.2-32.2, any person who kills the fetus of another by an intentional act committed while in the sudden heat of passion upon reasonable provocation is guilty of voluntary manslaughter. The proposal also specifies that any person who kills the fetus of another accidentally, contrary to the intention of the parties and while engaged in conduct so gross, wanton, and culpable as to show a reckless disregard for human life, is guilty of involuntary manslaughter.

Voluntary and involuntary manslaughter are defined as Class 5 felonies under § 18.2-35 and § 18.2-36, respectively. According to § 18.2-36.1(A), any person who, as a result of driving under the influence in violation of clause (ii), (iii), or (iv) of § 18.2-266 or any local ordinance substantially similar thereto, unintentionally causes the death of another person is guilty of involuntary manslaughter. Similarly, under § 18.2-36.2(A), any person who, as a result of operating a watercraft or motorboat in violation of clause (ii), (iii), or (iv) of subsection B of § 29.1-738 or a similar local ordinance, unintentionally causes the death of another person, is guilty of involuntary manslaughter.

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**Analysis:**

Existing data sources do not contain sufficient detail to identify the number of individuals who could be convicted of manslaughter if the proposal were enacted. However, affected offenders may be sentenced similarly to those currently convicted of manslaughter under § 18.2-35, § 18.2-36, § 18.2-36.1(A), or § 18.2-36.2(A). See table below.

**Offenders Convicted of Select Felony Offenses, FY2020-FY2021**

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Voluntary manslaughter (§ 18.2-35)	43	2.3%	-	-	97.7%	5.0 yrs.
Involuntary manslaughter (§ 18.2-36)	47	10.6%	23.4%	6.0 mos.	66.0%	4.0 yrs.
Involuntary manslaughter, under the influence (§ 18.2-36.1(A))	31	3.2%	6.5%	6.1 mos.	90.3%	3.0 yrs.
Involuntary manslaughter - watercraft, under the influence (§ 18.2-36.1(A))	0	NA	NA	NA	NA	NA

Note: The analysis is based on cases in which the offense was the primary, or most serious, offense at sentencing.

Sources: Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2020-FY2021;

Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2020-FY2021

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the circumstances in which individuals may be convicted of voluntary or involuntary manslaughter, the proposal could 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.** As new felonies, convictions under the proposed § 18.2-36.3 would not be covered by the sentencing guidelines as the primary (most serious) offense in a case; however, such convictions may augment the guidelines recommendation if a covered offense is the most serious at sentencing. 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.**

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