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**HOUSE BILL NO. 1154**

Offered January 9, 2002

Prefiled January 9, 2002

A *BILL* to amend the Code of Virginia by adding a section numbered 18.2-71.1 and to repeal § 18.2-74.1, relating to infanticide; penalty.

Patrons—Marshall, R.G., Athey, Black, Cosgrove, Cox, Ingram, Janis, Lingamfelter, Nixon, O'Brien, Oder, Rapp, Welch and Wright

Referred to Committee for Courts of Justice

Whereas, the General Assembly recognizes that:

The National Coalition of Abortion Providers estimates that up to 5,000 procedures that involve the deliberate dilatation of the cervix, usually over a sequence of days; instrumental conversion of the fetus to a footling breech; breech extraction of the infant excepting the head; and partial evacuation of the intracranial contents of a living fetus, to effect vaginal delivery of a dead intact fetus, are performed annually primarily on healthy women of healthy fetuses. The American Medical Association's Council on Legislation unanimously supported the ban on such procedures as "not medically indicated." Virginia medical teaching hospitals do not perform or teach this procedure as part of their curricula. Residency training does not require a resident physician perform such a procedure for completion of medical school requirements. The deans of Virginia's medical schools, when asked, found no data supporting the medical need for using a partial birth procedure;

The case upon which the right to privacy from which legal elective abortion contrives its constitutionality, *Roe v. Wade* (410 U.S. 113, 1973), significantly did not challenge that part of the then-existing Texas law criminalizing the killing of a fetus "in the state of being born." That statute (Article 4512.5) remains in the Texas Code unchanged since 1879, or by the Supreme Court's *Roe* and *Doe* decisions of 1973 and their legal progeny. Interestingly, because of an 1854 article in the *Virginia Medical Journal* that recognized a fetus as a legal human entity throughout gestation as accepted physiological knowledge of the time, the Virginia Code Commission recognized the common humanity of the child in utero and provided criminal law protections for such children against unjust assault. Then-Associate Justice Rehnquist explained in his dissent to the Supreme Court's decision in *Roe v. Wade* that any number of states had statutes barring abortions long before each had adopted the Fourteenth Amendment to the United States Constitution. How then could the amendment be read to encompass a privacy protection against an act most states found criminal?

"Beyond question, it is a difficult thing to draw a line and lay down a fixed general rule as to the precise time at which an unborn infant, or one in the process of being born, becomes a human being in the technical sense. There is not much change in the child itself between a moment before and a moment after its expulsion from the body of the mother, and normally, while still dependent upon its mother, the child for some time before it is born, has not only the possibility but a strong probability of an ability to live an independent life," *The People v. Chavez*, 77 Cal. App. 2d 621, 1947. Nonetheless, the line must be drawn here, and has been drawn in other states, at infanticide. Now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 18.2-71.1 as follows:**  
§ 18.2-71.1. Medically induced infanticide; penalty.

Any person who deliberately and intentionally delivers a living fetus or a substantial portion thereof into the vagina for the purpose of performing a procedure such person knows will directly kill the fetus, performs the procedure, kills the fetus and completes the delivery shall be guilty of a Class 4 felony. The procedure proscribed by this section shall include each of the following elements:

1. Deliberate dilatation of the cervix, usually over a sequence of days;
2. Instrumental conversion of the fetus to a footling breech;
3. Breech extraction of the body excepting the head; and
4. Partial evacuation of the intracranial contents of a living fetus, to effect vaginal delivery of a dead intact fetus.

**2. That § 18.2-74.1 of the Code of Virginia is repealed.**

**3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. 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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

INTRODUCED

HB1154