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HOUSE BILL NO. 1154

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Marshall
on February 7, 2002)

(Patron Prior to Substitute—Delegate Marshall, R.G.)

A *BILL* to amend the Code of Virginia by adding a section numbered 18.2-71.1 and to repeal § 18.2-74.2, relating to infanticide; penalty.

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.*

A. Any person who commits medically induced infanticide in violation of this section is guilty of a Class 4 felony.

B. "Medically induced infanticide" means causing the death of a living fetus by deliberately and intentionally performing either of the following procedures:

1. A procedure that includes the following steps, in sequence: (i) delivering a living fetus or a substantial portion thereof into the vagina for the purpose of performing a subprocedure intended to kill the fetus, (ii) performing such subprocedure, and (iii) completing the delivery of the fetus from the woman, regardless of whether the death of the fetus occurs before or after the completion of such delivery; or

2. A procedure that includes the following steps, in sequence: (i) surgically accessing a living fetus while in utero by Caesarian section for the purpose of performing a subprocedure intended to kill the fetus, (ii) performing such subprocedure, and (iii) delivering the fetus from the woman, regardless of whether the death of the fetus occurs before or after the completion of such delivery.

A substantial portion of a living fetus shall not be deemed to have been delivered into the vagina unless the portion of the living fetus so delivered includes (i) in the case of a breech presentation, at least the lower torso of the fetus up to the navel, and (ii) in the case of a cephalic presentation, the complete fetal head.

C. The term "medically induced infanticide" shall not include any of the following abortion procedures: the dilation and evacuation procedure involving dismemberment prior to removal from the body of the woman, the suction curettage procedure, or the suction aspiration procedure.

D. No physician shall be deemed to have violated this section based on performance of a procedure described in subsection B in circumstances where such procedure is necessary in appropriate medical judgment for the preservation of the life or health of the pregnant woman. A procedure described in subsection B shall be deemed necessary for the preservation of the life or health of the pregnant woman only if, in appropriate medical judgment, she suffers from an illness, injury, disease, disorder or other medical condition that so complicates her pregnancy as to necessitate the performance of such a procedure in order to avert her death or avoid a serious risk of substantial and irreversible impairment of a major bodily function.

E. A woman upon whom a procedure described in subsection B is performed may not be prosecuted under this section for a conspiracy to violate this section or for any other offense arising out of the performance of such procedure.

F. If any one or more subsections, provisions, clauses, phrases or words of this section, or the application thereof to any person or circumstance, is found to be unconstitutional, the same is hereby declared to be severable and the balance of this section shall remain effective.

2. That § 18.2-74.2 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 is _____ for periods of imprisonment in state adult correctional facilities and _____ for periods of commitment to the custody of the Department of Juvenile Justice.

HOUSE SUBSTITUTE

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