



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1154

(Patron – Marshall)

Date Submitted: 01/08/02

I.D #: 02-4041824

Topic: Infanticide

Proposed Change:

Adds §18.2-71.1 such that 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 that the person knows will kill the fetus then performs the procedure, kills the fetus, and completes the delivery is guilty of medically induced infanticide, punishable as a Class 4 felony. The procedure proscribed by the proposed statute must include (1) the deliberate dilation of the cervix, usually over a sequence of days, (2) the instrumental conversion of the fetus to a footling breech, (3) the breech extraction of the body excepting the head, and (4) the partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead intact fetus. The proposal also repeals §18.2-74.1, relating to abortion when necessary to save the life of a woman.

Current Practice:

Under §18.2-72, it is lawful for a licensed physician to perform an abortion during the first trimester of pregnancy. Under §18.2-73, a licensed physician may perform an abortion during the second trimester only if the procedure is performed in a hospital. Under §18.2-74, an abortion may be performed during the third trimester only if it is performed in a hospital and three doctors concur that continuation of the pregnancy will likely result in the death or the permanent impairment of the pregnant woman. Currently, under §18.2-74.1, when a licensed physician performs an abortion, assists in an abortion, or causes a miscarriage for the purpose of saving the woman's life, §§18.2-71, 18.2-73, and 18.2-74 are not applicable.

Currently, partial birth abortion (defined by §18.2-74.2(D) as the deliberate and intentional delivery of a living fetus or a substantial portion thereof into the vagina for the purpose of performing a procedure that the person knows will kill the fetus, the subsequent killing of the fetus and completion of the delivery) is a Class 1 misdemeanor under §18.2-74.2(A) unless the procedure is necessary to save the life of a mother. According to FY2001 Local Inmate Data System (LIDS) data, no offenders held pre- or post-trial in jail were convicted of performing a partial birth abortion under §18.2-74.2. Misdemeanor convictions are not covered by the sentencing guidelines as the primary (or most serious) offense but may augment the sentence recommendation as additional offenses.

As a new offense, convictions under §18.2-71.1 would not be covered by the guidelines as the primary offense but would augment the guidelines recommendation if a covered offense is the most serious at conviction.

Impact of Proposed Legislation:

The impact of the proposed legislation on state-responsible (prison) bed space cannot be quantified. The crimes described in the current §18.2-74.2 and the proposed §18.2-71.1 are similar with a few distinctions. First, the specific elements of the act defined under the proposed §18.2-71.1 but not under the existing §18.2-74.2. Therefore, the existing offense under §18.2-74.2 may cover a wider array of procedures than the proposal. Second, §18.2-74.2 exempts partial birth abortions done with the purpose of saving a woman's life. No such exception is incorporated into the proposed §18.2-71.1; thus, it would be possible to prosecute infanticide (partial birth abortions) conducted for the purpose of saving a woman's life under §18.2-71.1 but not under the existing §18.2-74.2. In essence, this distinction would create a new offense not currently define under the *Code of Virginia* and, therefore, could result in an impact on state-responsible (prison) beds. Finally, the deliberate and intentional delivery of a living fetus or a substantial portion thereof into the vagina for the purpose of performing a procedure that the person knows will kill the fetus and completion of the delivery (partial birth abortion), except for the purpose of saving a woman's life, is a Class 1 misdemeanor under §18.2-74.2 but, under the proposed §18.2-71.1, the deliberate and intentional delivery of a living fetus or a substantial portion thereof into the vagina for the purpose of performing a procedure that the person knows will kill the fetus and completion of the delivery (infanticide) is a Class 4 felony. It is possible that cases of partial birth abortion that would have been prosecuted as a Class 1 misdemeanor, could be prosecuted as a Class 4 felony as the result of the proposal. However, LIDS data revealed no convictions under the current §18.2-17.4 (partial birth abortion); therefore, the impact from this portion of the proposal is expected to be small. Nonetheless, no data is available to determine how many cases involve the procedural elements specified in the proposal or how many partial birth abortions are conducted for the purpose of saving a woman's life; hence, the impact of the proposed legislation is not quantifiable.

No adjustment to the sentencing guidelines would be necessary under the proposal.

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 \$0 for periods of commitment to the custody of the Department of Juvenile Justice.