



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1154

Floor Amendment in the Nature of a Substitute (Patron Prior to Substitute – Marshall)

Date Submitted: 02/08/02

I.D #: 02-4892824

Topic: Infanticide

Proposed Change:

Adds §18.2-71.1 to define “medically induced infanticide” and to make such an act a Class 4 felony. To commit “medically induced infanticide” would be to cause the death of a living fetus by deliberately and intentionally performing one of the procedures specified in the proposal. No physician, however, shall be held in violation of this section based on performance of such a procedure in circumstances where the procedure is necessary in appropriate medical judgment for the preservation of the life or health of the pregnant woman. Subsection B specifies that a substantial portion of a living fetus shall not be deemed to have been delivered into the vagina unless the portion 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. Under the proposed legislation, §18.2-74.2 would be repealed.

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 some distinctions. 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 same act and others are Class 4 felonies. 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; 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.