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HOUSE BILL NO. 1541

Offered January 8, 2003

Prefiled December 20, 2002

A BILL to amend and reenact § 32.1-249 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 18.2-71.1, and to repeal § 18.2-74.2 of the Code of Virginia, relating to infanticide; penalty.

Patrons—Marshall, R.G., Albo, Athey, Black, Byron, Cole, Cosgrove, Cox, Hugo, Janis, Lingamfelter, Reese, Rollison and Wright; Senators: Cuccinelli and Mims

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-249 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-71.1 as follows:

§ 18.2-71.1. Partial birth infanticide; penalty.

A. Any person who knowingly performs partial birth infanticide and thereby kills a human infant is guilty of a Class 4 felony.

B. "Partial birth infanticide" means a procedure in which:

1. The person performing the procedure deliberately and intentionally vaginally delivers a living infant until, in the case of a head-first presentation, the infant's entire head is outside the body of the mother, or, in the case of breech presentation, any part of the infant's trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living infant; and

2. Deliberately and intentionally performs the overt act, other than completion of delivery, that kills the partially delivered living infant.

C. Nothing in this section shall prohibit using medical procedures required to prevent the death of either the mother or her infant as long as every reasonable effort is made to preserve the life of both.

D. A woman upon whom a procedure described in subsection B is performed may not be prosecuted for any criminal offense arising out of the performance of such procedure.

E. If any 1 or more subsections, provisions, clauses, phrases or words of this section, or the application thereof to any person or circumstances, are found to be unconstitutional, the same are hereby declared to be severable and the balance of this section shall remain in effect.

§ 32.1-249. Definitions.

As used in this chapter:

1. "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death recently occurred.

2. "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, regardless of the duration of pregnancy; death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

a. "Induced termination of pregnancy" means the intentional interruption of pregnancy with the intention to produce other than a live-born infant or to remove a dead fetus and which does not result in a live birth.

b. "Spontaneous fetal death" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

3. "File" means the presentation of a vital record provided for in this chapter for registration by the Department.

4. "Final disposition" means the burial, interment, cremation, removal from the Commonwealth or other authorized disposition of a dead body or fetus.

5. [Repealed.]

6. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care, or to which persons are committed by law.

7. "Live birth" means the complete *or partial* expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

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58 *For purposes of this subsection, "complete or partial expulsion or extraction" occurs when at least*
59 *either the infant's entire head is outside the body of the mother or, in the case of a breech delivery,*
60 *when any part of the infant's trunk past the navel is outside the body of the mother.*

61 8. "Physician" means a person authorized or licensed to practice medicine or osteopathy in this
62 Commonwealth.

63 9. "Registration" means the acceptance by the Department and the incorporation of vital records as
64 provided for in this chapter into its official records.

65 10. [Repealed.]

66 11. "System of vital records" means the registration, collection, preservation, amendment, and
67 certification of vital records; the collection of other reports required by this chapter; and related
68 activities.

69 12. "Vital records" means certificates or reports of births, deaths, fetal deaths, adoptions, marriages,
70 divorces or annulments and amendment data related thereto.

71 **2. That § 18.2-74.2 of the Code of Virginia is repealed.**

72 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
73 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
74 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
75 **periods of commitment to the custody of the Department of Juvenile Justice.**