



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1151

Amendment in the Nature of a Substitute *(Patrons Prior to Substitute – Stolle)*

Date Submitted: 01/23/03

LD #: 03-0647536

Topic: Protection of infants

Proposed Change:

The proposal adds § 18.2-51.5 to make it a Class 3 felony for any person to willfully and deliberately engage in felonious conduct that directly causes the termination of the pregnancy of another. Any person, other than the mother of the child, who willfully and deliberately engages in felonious conduct that directly causes permanent, serious bodily injury to a child who is in utero at the time of the conduct is guilty of a Class 5 felony. Under the proposal, violation of this section constitutes a separate and distinct felony. The proposal also adds § 63.2-910.1 stipulating that a local department of social services has the authority to take custody of abandoned children, to arrange appropriate placements for such children, including foster care, and to institute proceedings for the termination of parental rights as provided for in Titles 63.2 and 16.1.

The proposal adds § 18.2-510.1 to make it a Class 1 misdemeanor if a woman, without the assistance of a health care professional, gives birth after more than 24 weeks have elapsed since the beginning of her last menstrual period and fails to report the birth (whether born alive or stillborn) within 2 weeks of the event to the health department or a law enforcement agency. The proposal also defines a Class 6 felony for any act to conceal an unreported birth or the identity of a parent in cases in which the infant is stillborn or dies prior to the birth being reported. Currently, when a birth occurs outside an institution under existing provisions (§ 32.1-257), the birth certificate is to be prepared on forms provided by the State Registrar of Vital Records by one of the following (in order of priority): 1) the physician in attendance at or immediately following birth or, in the absence of such a physician, 2) any other person in attendance at or immediately following birth or, in the absence of such a person, 3) the father or the mother, or, in the absence of the father and the inability of the mother, 4) the person in charge of the premises where the birth occurred. There is no secondary system of reporting, nor are there any penalties established for failure to submit the State Registrar's forms.

The proposal amends §§ 18.2-371, 18.2-371.1 and 40.1-103 to provide an affirmative defense to the prosecution of a parent who delivers the child to a hospital that provides 24-hour emergency services or to a rescue squad or fire department that employs emergency medical technicians, within the first two weeks of the child's life, if the prosecution is based solely on the parent having left the child at such a place. Currently, § 18.2-371 makes it a Class 1 misdemeanor to cause or encourage acts rendering children delinquent or abused; § 18.2-371.1 makes the gross, wanton or reckless care of a child a Class

6 felony and an act of child abuse or neglect a Class 4 felony; § 40.1-103 defines cruelty and injuries to children as a Class 6 felony.

Data Analysis:

Based on calendar year (CY) 2000 Virginia Center for Health Statistics data, there were 98,864 live births and 7,490 natural fetal deaths. Data are not available regarding the number of unattended births or the number of births that go unreported.

Convictions for the proposed crimes would not be covered by the sentencing guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Impact of Proposed Legislation:

By defining three new felony crimes and one new misdemeanor, the proposal may have an impact on state-responsible (prison) and local-responsible (jail) beds. However, criminal justice databases are insufficient to determine how many, if any, cases involve the termination of a pregnancy or the death of or injury to a child in utero, or how many cases of unreported births may be prosecuted as a result of the proposal. Therefore, the impact of the proposed legislation cannot be quantified.

By providing an affirmative defense, the amendments to §§ 18.2-371, 18.2-371.1 and 40.1-103 may reduce the number of offenders prosecuted under these sections and, therefore, reduce the need for state and/or local-responsible beds. However, available data is insufficient to determine the magnitude of any potential reduction.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.