



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 196

(Patron – Black)

Date Submitted: 12/23/03

LD #: 04-7612236

Topic: Murder of a fetus

Proposed Change:

The proposal adds § 18.2-32.2 to the *Code of Virginia* to specify in which cases the human fetus can be considered a person and can be the victim of murder. A fetus can be considered a victim of murder provided that (1) the person who committed the act resulting the death of the fetus did so with malice aforethought, (2) the person intended to cause the death of the pregnant woman or her fetus, (3) the act resulting in the death of the fetus that was not a lawful abortion or abortion to which the pregnant woman consented, and (4) the person who committed the act was not the pregnant woman whose fetus was killed. This section would apply whether or not the person committing the acts knew of the pregnancy.

Current Practice:

Currently, the *Code of Virginia* does not specifically define a fetus as a victim of homicide.

Under subsection A of § 18.2-51.2, the malicious wounding of any person with the intent to maim, disfigure, disable or kill is punishable as a Class 2 felony if the victim is severely injured and suffers permanent and significant physical impairment. However, a child in utero is not specifically designated a potential victim of this crime. Under subsection B of § 18.2-51.2, the malicious wounding of a pregnant woman with the intent to maim, disfigure, disable or kill her or to cause the involuntary termination of her pregnancy is also a Class 2 felony. Based on fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, there were no convictions for violations of subsection B of § 18.2-51.2 either as the primary (most serious) offense or an additional offense in a sentencing event. There were 118 convictions for violations of subsection A of § 18.2-51.2 as the primary offense in a sentencing event. Of these, 109 (92%) received state-responsible (prison) terms with a median effective sentence of fifteen years.

Impact of Proposed Legislation:

The proposed legislation establishes a new victim class that is not specifically defined in the current *Code*. The proposed legislation may have an impact on the bed space needs of the Commonwealth. However, the databases available to the Commission are insufficient to provide information on the number of incidences that may be affected by the proposed legislation.

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

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The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.