



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 230**

*(Patron – Kilgore)*

**Date Submitted:** 12/29/03

**LD #:** 04-1407372

**Topic:** Death or bodily injury of child in utero; duty to report childbirth

#### **Proposed Change:**

The proposal adds § 18.2-51.5 to the *Code of Virginia* to specify that any person, other than the mother of the child, who willfully, deliberately, and intentionally engages in unlawful conduct causing the death of, or permanent, serious bodily injury to a child who is in utero at the time is guilty of a Class 2 felony. If such person willfully and deliberately engages in unlawful conduct causing the death of or permanent, serious bodily injury to a child in utero, he is guilty of a Class 4 felony. A violation of this section shall constitute a separate and distinct felony.

The proposal also adds § 18.2-510.1 relating to one's duty to report a childbirth. Any woman who, without a health care professional in attendance, gives birth after more than 24 weeks have elapsed since the beginning of her last menstrual period and who fails to report the birth, whether a live birth or stillbirth, within 72 hours of the event to the health department or to a law enforcement agency is guilty of a Class 1 misdemeanor. If such birth is a stillbirth or if the infant dies prior to the birth being reported, any person who takes any action to conceal the birth or to conceal the identity of the parent is guilty of a Class 6 felony.

#### **Data Analysis:**

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 new crimes that are not specifically defined in the current *Code*. The proposal 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 new convictions that may result under the proposed legislation. No adjustment to the 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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