



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 671

(Patron – Bell)

Date Submitted: 12/9/03

LD #: 04-7505232

Topic: Death or bodily injury of a child in utero

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.

Current Practice:

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 crime that is 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 cannot be determined 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.