



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 772

(Patron – McDougle)

Date Submitted: 12/24/03

LD #: 04-0005408

Topic: Murder of an unborn child

Proposed Change:

The proposal adds § 18.2-32.2 to the *Code of Virginia* to specify that an unborn child is to be considered a person and can be the victim of a murder if four conditions are met. These conditions are (1) that the person committed the act resulting in the death the unborn child with malice aforethought, (2) that the person intended to cause the death of the pregnant woman or her unborn child, (3) the act causing the death of the unborn child was not a lawful abortion or an abortion to which the pregnant woman had consented, and (4) the person committing the act resulting in a death of an unborn child is not the pregnant woman whose unborn child was killed. Under the proposal, it is unnecessary for the offender to know that the woman was pregnant or the existence of the unborn child for the statute to apply. For the purposes of this section, an unborn child is the product of human conception in its third trimester.

Current Practice:

Currently, the *Code of Virginia* does not explicitly define an unborn child as a victim of murder.

Impact of Proposed Legislation:

The proposed legislation may have an impact on the bed space needs of the Commonwealth. This proposal would establish a special class of victim that is not specifically defined in the *Code*. Because no new penalty structure is defined by the proposal, the existing murder statutes would apply to the new class of victim described in the proposed statute. 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.

The Murder/Homicide sentencing guidelines cover convictions under §§ 18.2-32, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1(A) and 18.2-36.1(B), as well as attempts and conspiracies to commit any of those crimes. As the existing murder statutes remain unchanged (with only the addition of a new class of victim), convictions under one of the statutes listed, where the conditions of the proposed § 18.2-32.2 have been applied, would be covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

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.

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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