



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1841 (Patron – Marshall, R.G.)

Date Submitted: 1/5/2005

LD #: 05-3738396

Topic: Menstrual extraction with pregnancy test

Proposed Change:

This proposal adds § 18.2-76.3 to require a pregnancy test before a person performs a menstrual extraction on any woman for the purpose of ensuring a non-pregnant condition. Menstrual extraction is a process by which menstrual blood is evacuated from the uterus by use of an airtight, hand-operated suction device. As an abortion procedure, it is used early in the first trimester (www.chclibrary.org/micromed/00035760.html). Under the proposal, performing a menstrual extraction without a pregnancy test is a Class 6 felony. The provisions would not apply to any diagnostic procedure for the detection or treatment of a pathological condition.

Currently, under § 18.2-71, any person who unlawfully produces or performs an abortion or miscarriage is guilty of a Class 4 felony; § 18.2-72 provides that physicians licensed by the Board of Medicine may perform abortions during the first trimester of a woman's pregnancy.

Analysis:

According to the Fiscal Year (FY) 2002 and FY2003 Pre/Post-Sentence Investigation (PSI) database, there were no felony convictions for unlawfully performing an abortion in violation of § 18.2-71.

Impact of Proposed Legislation:

The proposed legislation requires a pregnancy test before menstrual extraction may be performed unless the procedure is performed for diagnostic or treatment purposes. The number of persons who may be affected by the proposed requirement cannot be determined. Nonetheless, it is assumed that persons legally qualified to perform a menstrual extraction would comply with the proposed change. Persons not legally qualified to perform a menstrual extraction would presumably be performing or attempting to perform an illegal abortion, and subject to the more stringent penalties under § 18.2-71. Under that scenario, the proposal would not result in an increase in state-responsible (prison) bed space needs.

As the proposal defines a new crime, this act would not be covered by Virginia's sentencing guidelines when it is the primary (most serious) offense in a case; however, convictions under the proposed statute may augment the guidelines recommendation if a covered offense is the most

serious at conviction. 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 is \$0 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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