



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2532

(Patron – Landes)

LD#: 07-0401376

Date: 12/21/2006

Topic: Unintentional cause of death of a fetus

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposal adds § 18.2-36.3 to specify that any person who, while engaged in wanton and willful conduct that shows reckless disregard for the safety of others, causes injury to a pregnant woman that results in the death of the fetus is guilty of involuntary manslaughter. Involuntary manslaughter is a Class 5 felony punishable by imprisonment of 1 to 10 years.

Currently, under § 18.2-32.2, is a Class 2 felony for any person to unlawfully, willfully, deliberately, maliciously and with premeditation kill the fetus of another. If such an offense is committed without premeditation, it is a felony punishable 5 to 40 years in prison. Under § 18.2-32.1, the willful and deliberate killing of a pregnant woman without premeditation by one who knows that the woman is pregnant with intent to cause the involuntary termination of the pregnancy without a live birth is a felony punishable by 10 to 40 years in prison.

Analysis:

According to the fiscal year (FY) 2002 and 2003 Pre/Post-Sentence Investigation (PSI) database, more than half (54%) of the offenders convicted for involuntary manslaughter received a state-responsible (prison) term; the median prison sentence was three years. Approximately 29% were sentenced to a local-responsible (jail) term, while the remaining 17% were given probation without an active term of incarceration.

According to information from the National Conference of State Legislatures (NCSL)¹, as of June 2005, at least 34 states have fetal homicide laws. From an examination of the NCSL information, only a subset of 21 states include manslaughter in their fetal homicide laws: 10 states have manslaughter statutes that apply when the victim is an unborn child, one state has case law that would allow the manslaughter statute to apply to an unborn child, and 10 other states have manslaughter statutes that apply only when the unborn child is viable.

¹ See www.ncsl.org/programs/health/fethom.htm.

Impact of Proposed Legislation:

State adult correctional facilities. Because it defines a new felony, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. The magnitude of impact cannot be quantified, however, because the new crime includes several specific elements for which no information is available.

Local adult correctional facilities. The proposal may increase the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. The proposal may increase the need for adult community corrections programs, but the magnitude of the impact cannot be determined.

Virginia's sentencing guidelines. Involuntary manslaughter convictions under § 18.2-36 and § 18.2-36.1 are covered by the sentencing guidelines. The new crime defined by the proposal would not be covered by the guidelines as the primary (or most serious) offense in a case but could augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal may increase juvenile correctional center (JCC) bed space needs, but the magnitude of the impact cannot be determined. If a juvenile were committed to DJJ for the proposed felony, the minimum confinement assigned under the Department's Length of Stay (LOS) guidelines would be 6 to 12 months.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal may increase the bed space needs of juvenile detention facilities, but the magnitude of the impact cannot be determined.

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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