



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 312

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Landes)

LD#: 08-0829592

Date: 1/17/2008

Topic: Unintentionally causing miscarriage or stillbirth

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 the *Code of Virginia*. Under the proposal, any person who, while engaged in conduct so gross, wanton, and culpable that he or she shows reckless disregard for the life or safety of others, causes injury to a pregnant woman that results in a miscarriage or stillbirth would be guilty of a Class 5 felony.

Currently, there are several provisions in the *Code of Virginia* pertaining to the injury of a pregnant woman or her fetus:

- The willful, deliberate, and premeditated killing of a pregnant woman by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth is a capital offense, punishable by death or life in prison (§ 18.2-31);
- 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 and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth shall be punished by a term of imprisonment of 10 to 40 years;
- Under § 18.2-32.2(A), it 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 by 5 to 40 years in prison (§ 18.2-32.2(B)); and
- The aggravated malicious wounding statute, § 18.2-51.2, prohibits any person from maliciously shooting, stabbing, cutting or wounding any woman who is pregnant with the intent to maim, disfigure, disable or kill the pregnant woman or to cause the involuntary termination of her pregnancy. If the act results in involuntary termination of a woman's pregnancy, the offender is guilty of a Class 2 felony.

Similar to the proposed § 18.2-36.3, involuntary manslaughter is a Class 5 felony and does not require an intent to kill.

Analysis:

According to the fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) database, two offenders were convicted under subsections A or B of § 18.2-32.2 for unlawfully, willfully, deliberately, and maliciously killing a fetus. Both of these offenders were sentenced to prison.

During the same period, one offender was convicted under 18.2-32.1 for killing a pregnant woman without premeditation. This offender was also sentenced to prison.

There were no convictions during this two-year period for malicious wounding of a pregnant woman (§ 18.2-51.2(B)) or capital murder of a pregnant woman (§ 18.2-31).

The crime of involuntary manslaughter is a Class 5 felony and does not involve the intent to kill. According to FY2006 and FY2007 PSI data, the majority of the offenders convicted of involuntary manslaughter (80%) received a state-responsible (prison) term, for which the median sentence was 3.3 years. Most of these offenders were also convicted of other charges.

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. However, the magnitude of the impact cannot be quantified 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 state community corrections resources, but the magnitude of the impact cannot be determined.

Virginia's sentencing guidelines. As a new felony, a violation of § 18.2-36.3 would not be covered by the sentencing guidelines as the primary (most serious) offense. A conviction under this provision, however, could augment the guidelines recommendation if the most serious offense at sentencing is a covered offense. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the impact of the proposal on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal on the bed space needs of juvenile detention facilities 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.