



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1241

(Patron – Dunnivant)

LD #: 17102935

Date: 1/5/2017

Topic: Female genital mutilation

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined**
- **Juvenile Detention Facilities:**
Cannot be determined**

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the 2016 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-51.7 to the *Code of Virginia* to make the circumcision, excision or infibulation of the labia majora, labia minora, or clitoris of another person under the age of 18 a felony punishable by 20 years to life imprisonment with a five-year mandatory minimum term. In addition, any parent, guardian, or other person legally responsible for a minor who consents to such an act would be guilty of a Class 2 felony, which is punishable by up to life imprisonment. While the proposal establishes certain exceptions, it would not be a defense for a violation of the section that the procedure was required by custom, ritual, or religious practice. The proposal also provides for civil action.

The proposed offenses may overlap with existing crimes, including malicious wounding under § 18.2-51 (a Class 3 felony punishable up to 20 years incarceration) and aggravated malicious wounding under § 18.2-51.2(A) (a Class 2 felony punishable by up to life imprisonment).

Female genital mutilation is currently prohibited under federal law and in 24 states, including West Virginia, Maryland, and Tennessee.

Analysis:

Existing data sources do not contain sufficient detail to determine the number of cases of female genital mutilation that occur in the Commonwealth. A 2016 report from the Centers for Disease Control and Prevention estimated that over 513,000 women and girls are at risk for or have undergone female

genital mutilation nationwide, with 169,000 of those being girls under the age of 18.¹ In addition, an analysis of U.S. Census Bureau data from 2000 by Brigham and Women's Hospital estimated that a total of 17,980 women and girls in Virginia were at risk for female genital mutilation, with 4,312 of these individuals being girls under 18.² No data are currently available to indicate how often female genital mutilation is performed in the Commonwealth.

Offenses under this proposal may be sentenced similarly to aggravated malicious wounding, which carries a penalty of 20 years to life imprisonment. Unlike the proposed penalties for performing female genital mutilation, aggravated malicious wounding does not require a mandatory minimum sentence.

According to the fiscal year (FY) 2015 and FY2016 Sentencing Guidelines database, 125 offenders were convicted of a felony for aggravated malicious wounding under § 18.2-51.2(A). This offense was the primary, or most serious, offense in 114 of the cases. Almost all (98.2%) of these offenders were sentenced to state-responsible (prison) terms, with a median active sentence of 15 years. The remaining two individuals (1.8%) received local-responsible (jail) terms of three months and nine months, respectively.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates new felony offenses, one of which would carry a five-year mandatory minimum term, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that may result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

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

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

Virginia's sentencing guidelines. As new felony offenses, convictions under the proposed § 18.2-51.7 would not be covered by the sentencing guidelines when this crime is the primary (most serious) offense in a case. A conviction for such an offense, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

¹ U.S. Centers for Disease Control and Prevention, Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk, 2012. Retrieved from <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Special%20Situations/fgmutilation.pdf>

² Brigham and Women's Hospital African Women's Center, Female Genital Cutting Risk in America. Retrieved from http://www.brighamandwomens.org/Departments_and_Services/obgyn/services/africanwomenscenter/FGCbystate.aspx

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; therefore, Chapter 780 of the 2016 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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