



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 422 (Patron – Marshall, R.G.)

LD#: 08-0557616

Date: 1/4/2008

Topic: Legality of abortion following viability

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:**
None
- **Juvenile Detention Facilities:**
None

Summary of Proposed Legislation:

The proposal amends §§ 18.2-75 and 18.2-76, and adds § 18.2-74.3 relating to the legality of abortion following a determination of viability. The proposal also repeals §§ 18.2-72, 18.2-73, and 18.2-74. The proposed § 18.2-74.3 makes it a Class 4 felony for any person to knowingly perform an abortion except to prevent the death of the woman (i) when no determination of viability has been made in accordance with this section or (ii) after a fetus has been determined to be viable. Determination of fetal viability shall be made by two physicians prior to the performance of any abortion on the basis of their best clinical judgment. The physicians shall determine whether there is a realistic possibility of maintaining and nourishing the life of the fetus outside of the womb, with or without temporary, artificial life-sustaining support. The proposal amends §§ 18.2-75 and 18.2-76 to remove any references to the repealed §§ 18.2-72, 18.2-73, and 18.2-74.

Analysis:

No convictions under the existing § 18.2-71 (relating to unlawfully producing an abortion) can be identified in fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation data.

According to the Virginia Department of Health, there were 25,918 induced pregnancy terminations in Virginia in 2004¹. The number of cases in which a fetus may have been determined to be viable cannot be identified with existing data.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates a new felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The magnitude of the impact, however, cannot be quantified with existing data.

¹ www.vdh.virginia.gov/VitalEvents04.pdf

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs. The magnitude of the impact cannot be quantified with existing data.

Adult community corrections resources. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Convictions under § 18.2-74.3 would not be covered by the sentencing guidelines as the primary (most serious) offense at conviction. If enacted, however, convictions under this statute may 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 is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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.

abort05_0557