



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 504 (Patron – Smith)

LD #: 10101088

Date: 12/14/2009

Topic: Forced or coerced abortion prohibited

Fiscal Impact Summary:

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

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 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 § 18.2-71.2 to the *Code of Virginia*. Under the proposal, it would be a Class 1 misdemeanor for any person to force or coerce a pregnant female of any age to have an abortion against her will. However, it would be a Class 6 felony for the father or putative father of the unborn child, when the pregnant female is less than 18 years of age and the father or putative father is 18 years of age or older, to force or coerce the female to have an abortion against her will.

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 with 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 with the intent to cause the involuntary termination of the woman's pregnancy without a live birth is punishable by a term of imprisonment of 10 to 40 years;
- Under § 18.2-32.2(A), it is a Class 2 felony (punishable by imprisonment of 20 years to life) 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 involuntarily termination of a woman's pregnancy, the offender is guilty of a Class 2 felony.

Analysis:

According to the fiscal year (FY) 2007 and FY2008 Pre/Post-Sentence Investigation (PSI) database, one offender was convicted under subsection B of § 18.2-51.2 for maliciously wounding a pregnant victim and causing permanent impairment or a terminated pregnancy. This offender was sentenced to a prison term of five years.

During the same period, one offender was convicted under 18.2-31 (11) for capital murder of a pregnant woman. This offender was sentenced to life in prison.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates a new felony offense, the proposal may have an impact on the future 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 likely to result from enactment of the proposal. The magnitude of the impact on prison beds cannot be quantified.

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. Because the proposal could result in 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 cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. The new offense would not be covered by the guidelines as the primary offense, but it may augment the guidelines recommendation if a covered offense is the most serious at sentencing. 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. According to the Department of Juvenile Justice (DJJ), 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; therefore, Chapter 781 of the 2009 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.