



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1095

(Patron – Kory)

LD #: 22100984

Date: 12/07/2021

Topic: Medical aid in dying

Fiscal Impact Summary:

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

- **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 552 of the 2021 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 8.01-622.1 and adds §§ 54.1-2999 through 54.1-2999.9 to the *Code of Virginia*. The proposal defines numerous terms and specifies protocols through which a qualified patient with a terminal condition may request, and a health care professional may provide, medication for the purpose of ending the patient's life. The proposal establishes three new felonies associated with providing medical aid in dying. As proposed, it would be a Class 2 felony (i) to willfully and deliberately alter, forge, conceal, or destroy a patient's request, or rescission of request, for a self-administered controlled substance to end his life with the intent and effect of causing the patient's death; (ii) to coerce, intimidate, or exert undue influence on a patient to request a self-administered controlled substance for the purpose of ending his life or to destroy the patient's rescission of such request with the intent and effect of causing the patient's death; or (iii) to coerce, intimidate, or exert undue influence on a patient to forgo a self-administered controlled substance for the purpose of ending the patient's life. Actions not authorized by the proposal may be subject to other criminal penalties provided by the *Code*.

Analysis:

As of December 2021, California, Colorado, District of Columbia, Hawaii, Maine, New Jersey, New Mexico, Oregon, Vermont, and Washington have death with dignity statutes; the New Mexico statute, approved in 2021, went into effect June 18, 2021.¹ In Montana, physician-assisted dying has been legal since 2009.¹ In 2009, Montana's Supreme Court ruled that nothing in the state law prohibited a physician from honoring a terminally ill, mentally competent patient's request by prescribing medication to hasten the patient's death. According to the Oregon Health Authority, during 2020, 370 people received prescriptions under the provisions of the Death with Dignity Act and 245 people took the medications prescribed to them under the provisions of the Act. Similar to previous years, of the Death with Dignity

¹ DeathwithDignity.org. Retrieved December 6, 2021, from <https://deathwithdignity.org/in-your-state/>.

deaths in Oregon during 2020, most patients were 65 years of age or older (81%), and most had cancer (66%). All patients whose health insurance status was known had some form of coverage (26% private, 74% Medicare or Medicaid). Most were in hospice care at the time of their death (95%) and died at home (92%).²

No data are available to estimate the number of people in Virginia who may pursue the option established by the medical-aid-in-dying provisions or the number of people who may violate the felony provisions created by the legislation.

Impact of Proposed Legislation:

State adult correctional facilities. By creating three new Class 2 felony offenses, 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 that may result from enactment of the proposal. Although the magnitude of the impact on prison beds cannot be quantified, the impact, if any, is likely to be small.

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. The impact, if any, is likely to be small.

Adult community corrections programs. Because the proposal could result in additional convictions with supervision requirements for the offenders, the proposal may affect adult community corrections resources. While the potential impact on community corrections resources cannot be quantified, any impact is likely to be small.

Virginia's Sentencing Guidelines. As new felonies, convictions under the proposed § 54.1-2999.6 would not be covered by the Sentencing Guidelines when the offense is the primary, or most serious, offense in a case. However, convictions under this statute 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.

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 552 of the 2021 Acts of Assembly, Special Session I, 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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² Oregon Health Authority 2020 Data Summary, www.oregon.gov/oha/PH/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year23.pdf