

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB1274

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Freitas

3. Committee: Courts of Justice

4. Title: Pain-Capable Unborn Child Protection Act; penalty.

5. Summary: Creates the Pain-Capable Unborn Child Protection Act. The Act prohibits an abortion after 20 weeks gestation unless, in reasonable medical judgment, the mother has a condition that so complicates her medical condition as to necessitate the abortion to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function. When an abortion is not prohibited post-20 weeks' gestation, the physician or authorized nurse practitioner is required to terminate the pregnancy in a manner that would provide the unborn child the best opportunity to survive. The bill punishes performance of an abortion in violation of the Act as a Class 6 felony. The bill also provides for civil remedies against a physician or authorized nurse practitioner who performs an abortion in violation of the Act.

6. Budget Amendment Necessary: Yes, item 404.

7. Fiscal Impact Estimates: See item 8.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2023	\$50,000		01000

8. Fiscal Implications: The provisions of this legislation will have a fiscal impact on the Virginia Department of Health, local jails, and the Compensation Board.

Virginia Department of Health

The provisions of the bill require abortion providers to determine the post-fertilization age of the fetus and to routinely submit reports to the Virginia Department of Health (VDH) that include the following information about each procedure: the post-fertilization age and the means for determining this; the method of abortion; whether fetal demise was induced using an intrafetal injection; the age and race of the patient; if the abortion occurred at or beyond 20 weeks; the basis for determining that the procedure was necessary to prevent the death or serious, irreversible physical harm to the mother; and if the abortion occurred at or beyond 20 weeks gestation, whether or not the provider performed the abortion in a manner that offered the best opportunity of survival to the fetus. These reports shall include a medical record

identification number to enable matching the report to the patient's medical records but no other information identifying the patient. VDH shall produce a summary report of this information for the public on an annual basis.

VDH would need to modify the Virginia Vital Events Screening Tracking System (VVESTS) in order to incorporate the reporting requirements outlined in the bill. VVESTS is a suite of products consisting of the Electronic Birth Certificate (EBC), Electronic Death Registration System (EDRS) and the Virginia Infants Screening and Infants Tracking System (VISITS). Specifically, VDH would need to make changes to the existing EDRS Induced Termination of Pregnancy (ITOP) Module, including changing the application screen and developing new reports. VDH would also need to provide training for ITOP Module user groups before implementing the required changes. In addition, the Office of Vital Records (OVR) would need to redesign the existing paper forms to collect new data elements required by the bill.

VDH estimates that it would have a one-time cost of \$56,389 for system modifications and \$7,920 in ongoing costs starting in FY24 for project management. VDH's Office of Vital Records has sufficient nongeneral fund resources from the Virginia Vital Statistics Automation Fund to handle the costs associated with the bill.

Local Jails

Class 6 Felony: For someone convicted of a Class 6 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 552, 2021 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Class 1 misdemeanor: Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both.

According to the Virginia Criminal Sentencing Commission, not enough information is available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

9. Specific Agency or Political Subdivisions Affected: The Virginia Department of Health, local jails, and the Compensation Board.

10. Technical Amendment Necessary:

11. Other Comments: SB710, as introduced by Senator Chase, is a companion bill.