



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1865

(Patron – Scott, P.A. and Orrock)

LD #: 23100786

Date: 11/17/2022

Topic: Abortion based on disability, sex or ethnicity of unborn child

#### 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) \*\*
- \*\* 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 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

#### Summary of Proposed Legislation:

The proposal specifies that, except in a medical emergency, no physician or nurse practitioner shall perform, induce, or attempt to perform or induce an abortion unless the physician or nurse practitioner has first confirmed that the abortion is not being sought on the basis of a disability or the sex or ethnicity of the unborn child. The physician or nurse practitioner must document these facts in the patient's chart, as well as in a report to be filed with the State Health Commissioner within 15 days of the abortion. The physician or nurse practitioner must sign the report as an attestation under the penalty of perjury that the information stated is true and correct to the best of his/her knowledge. Under § 18.2-434, perjury is a Class 5 felony punishable by imprisonment of 1 to 10 years.

The proposal further provides that any person performing such a prohibited abortion has committed an act of unprofessional conduct, that his/her license to practice medicine or as a nurse practitioner in the Commonwealth shall be suspended or revoked pursuant to the rules of unprofessional conduct, and that he/she is subject to a civil penalty.

#### Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who could be convicted of perjury if the proposal were enacted. However, affected offenders may be sentenced similarly to those currently convicted of perjury under § 18.2-434.

According to Sentencing Guidelines data for fiscal year (FY) 2021 and FY2022, 60 offenders were convicted of perjury under § 18.2-434. The perjury offense was the primary, or most serious, offense at sentencing in 39 of the cases. Of these, 53.8% of the offenders did not receive an active term of incarceration to serve after sentencing. Another 41.0% of the offenders were given a local-responsible (jail) term for which the median sentence was 6.0 months. The remaining 5.1 % (two offenders) received a state-responsible (prison) term with a median sentence of 1.0 year.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal potentially expands the applicability of an existing felony offense for which imprisonment is authorized. In this way, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal; therefore, the magnitude of the impact cannot be determined.

**Local adult correctional facilities.** Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

**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 affected cases cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's Sentencing Guidelines.** Felony convictions under § 18.2-434 (perjury) are covered by the Sentencing Guidelines. No adjustment to the Guidelines is necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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**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 2 of the Acts of Assembly of 2022, 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**