

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: HB2278

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Byron

3. Committee: Courts of Justice

4. Title: Abortion; when lawful; 15-week gestational age; exceptions; penalty.

5. Summary: Makes it a Class 4 felony for any physician licensed by the Board of Medicine to practice medicine and surgery to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman if the physician determines using best clinical judgment that the gestational age of the unborn child is more than 15 weeks, unless (i) the physician determines, based upon best clinical judgment, that the continuation of the pregnancy will result in the death of the woman or substantially and irreversibly impair one or more of such woman's major bodily functions, not including psychological or emotional conditions, or (ii) the pregnancy is the result of rape or incest. The bill further requires that any abortion procedure performed after it is determined that the unborn child's gestational age is more than 15 weeks is required to be performed in a hospital licensed by the State Department of Health or operated by the Department of Behavioral Health and Developmental Services. The bill provides that its provisions shall be known as the Pain-Capable Unborn Child Protection Act.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary, see item 8.

8. Fiscal Implications: For someone convicted of a Class 4 felony, the court must impose either a term of imprisonment of not less than two years nor more than 10 years together with a fine of not more than \$100,000, or imprisonment only. Therefore, this proposal could result in an increase in the number of persons sentenced to 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. The Governor's introduced budget, HB1400/SB800, provides \$50,000 under the Department of Corrections to account for this fiscal impact.

This bill repeals § 32.1-92.2, which authorizes VDH to use state general funds to fund abortions for patients who are eligible for Medicaid when a physician certifies that the fetus will be born with a gross and totally incapacitating physical deformity or mental deficiency. Total expenditures in FY22 were \$13,358.87.

9. Specific Agency or Political Subdivisions Affected: Local and Regional Jails, Department of Corrections, law enforcement agencies, courts, and the Virginia Department of Health.

10. Technical Amendment Necessary: No.

11. Other Comments: None.