



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2278

(Patrons – Byron, Scott, P.A. and Wright)

LD #: 23104306

Date: 01/12/2023

Topic: Unlawful abortions

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 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 repeals §§ 18.2-72 and 18.2-74 related to lawful abortions and § 32.1-92.2 related to state funding of abortions. The proposal amends §§ 16.2-241. 18.2-71. 18.2-73, 18.2-74.1. 18.2-75 and 18.2-76 associated with prosecution, penalties for unlawful abortions and consent requirements. Under the proposal, it is unlawful 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 that the probable gestational age of the unborn child is more than 15 weeks. If more than 15 weeks, an abortion is unlawful unless (i) the physician determines that, in his medical opinion, based upon his best clinical judgment, the continuation of the pregnancy is likely to result in the death of the woman or substantially and irretrievably 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 proposal further requires that any such procedure be performed in a hospital licensed by the State Department of Health or operated by the Department of Behavioral Health and Developmental Services and that measures for life support for the product of such abortion or miscarriage shall be available and utilized if there is any clearly visible evidence of viability. Under the proposal, an unlawful abortion is punishable as a Class 4 felony under § 18.2-71.

Currently, under §§ 18.2-71 and 18.2-71.1, unlawfully producing an abortion or performing partial birth infanticide are Class 4 felonies. It is a Class 3 misdemeanor under § 18.2-76.1 to encourage, promote or

advertise any prohibited abortion procedures. Violations related to consent for abortions are punishable as Class 3 misdemeanors under § 16.1-241.

Analysis:

According to data from the General District Court and Circuit Court Case Management Systems (CMS) for fiscal year (FY) 2017 through FY2022, there were no convictions under the existing abortion-related statutes of §§ 18.2-71, 18.2-71.1, 18.2-76.1 or 16.1-241 during that time period.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal potentially expands the applicability of existing felony offenses for which imprisonment is authorized. In this way, the proposal could increase 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 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 impact of the proposal on local-responsible (jail) bed space needs cannot be determined. The impact, if any, is likely to be small.

Adult community corrections resources. The impact, if any, on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's Sentencing Guidelines. The Sentencing Guidelines do not currently cover abortion law violations as the primary (most serious) offense in a sentencing event. However, a conviction for an abortion-related crime (as an additional offense) may 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 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.

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.