



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 278 (Patron – Hashmi)

LD #: 24102762

Date: 12/27/2023

Topic: Virginia Abortion Care and Gender-Affirming Health Care Protection Act

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: \$50,000 * • Local Adult Correctional Facilities: Cannot be determined • Adult Community Corrections Programs: Cannot be determined 	<ul style="list-style-type: none"> • Juvenile Correctional Centers: None (\$) ** • Juvenile Detention Facilities: None (\$) ** <p>** Provided by the Department of Juvenile Justice</p>
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* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, 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 amends §§ 8.01-412.10, 19.2-99, 19.2-100, 19.2-273, and 19.2-274 and adds § 19.2-87.1 and §§ 32.1-376 through 32.1-380 to establish the Virginia Abortion Care and Gender-Affirming Health Care Protection Act. As proposed, all persons are entitled to provide, receive, and help others provide or receive abortion care and gender-affirming health care services not prohibited under the laws of the Commonwealth. The proposal provides that no law-enforcement officer acting on behalf of the state or local jurisdiction may investigate, arrest, or detain any person, seek the issuance of a warrant, or otherwise assist in or provide support for any investigation regarding either the provision or receipt of abortion care or gender-affirming care not prohibited under the laws of the Commonwealth or any person's menstrual health data. The proposal provides additional requirements related to extraditions, subpoenas and subpoenas under the Uniform Interstate Depositions and Discovery Act. As proposed, a private right of action is established for anyone who is harmed by abusive litigation.

There are perjury provisions under the proposed §§ 8.01-412.10 and 19.2-273 when a false attestation is made in the issuance of a subpoena or certifying the need that a witness is needed related to protected health care activity defined by § 32.1-377. Under § 18.2-434, perjury is a Class 5 felony punishable by imprisonment of 1 to 10 years.

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) 2022 and FY2023, 67 offenders were convicted of perjury under § 18.2-434. The perjury offense was the primary, or most serious, offense at sentencing in 41 of the cases. Of these, 68.3% of the offenders did not receive an active term of incarceration to serve after sentencing. Another 22.0% of the offenders were given a local-responsible (jail) term for which the median sentence was 7.0 months. The remaining 9.8 % (four offenders) received a state-responsible (prison) term with a median sentence of 1.0 year.¹

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. Felony offenses in § 18.2-434 are not defined as violent under § 17.1-805(C) for the purposes of 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 1 of the Acts of Assembly of 2023, 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.

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¹ Under current law, felony offenses defined in § 18.2-434 are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will serve a minimum of 67% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.