



Fiscal Impact Statement for Proposed Legislation
Virginia Criminal Sentencing Commission

House Bill No. 664
(Patron – Freitas)

LD#: 24100652

Date: 11/29/2023

Topic: Treatment and care of born alive infants

Fiscal Impact Summary:

<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Juvenile Correctional Centers: None (\$0) ** • Juvenile Detention Facilities: None (\$0) ** <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 adds § 18.2-76.3 to the *Code of Virginia* and amends §§ 32.1-127 and 54.1-2915 relating to failure to provide care and treatment to an infant born alive. The proposal requires every health care provider licensed by the Board of Medicine who attempts to terminate a pregnancy to exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant who has been born alive as a reasonably diligent and conscientious health care practitioner would render to any other child born alive at the same gestational age. It further requires every health care provider to take all reasonable steps to ensure the immediate transfer of the infant who has been born alive to a hospital for further medical care. A health care provider who fails to comply with the requirements of this proposal would be guilty of a Class 4 felony and may be subject to disciplinary action by the Board of Medicine.¹

The proposal also requires every hospital licensed by the Department of Health to establish a protocol for the treatment and care of an infant who has been born alive following performance of an abortion. Under the proposal, protocol must be established for the immediate reporting to law enforcement of any failure to provide such required treatment and care.

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

¹ Under current law, felony offenses defined in §§18.2-71 and 18.2-71.1 and as proposed by § 18.2-76.3 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.

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) 2018 through FY2023, 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. By establishing a new felony offense, the proposal may 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 proposal may increase the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined. The impact, if any, is likely to be small.

Adult community corrections programs. 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 cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's Sentencing Guidelines. The Sentencing Guidelines do not currently cover abortion law violations when such a felony is the primary (or most serious) offense. Furthermore, the Guidelines do not apply if the most serious offense at sentencing is a misdemeanor. However, such convictions may augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. Felony offenses proposed by § 18.2-76.3 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.