



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 280 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Hashmi)

LD #: 24106105

Date: 01/25/2024

Topic: End of life decision making

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 Direct Care: Cannot be determined** • Juvenile Detention Facilities: Cannot be determined** <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 § 8.01-622.1 and adds several sections to the *Code of Virginia* to establish provisions for medical aid in dying. The proposal defines numerous terms and specifies protocols through which an adult diagnosed with a terminal disease may request, and an attending health care provider may prescribe, a self-administered controlled substance for the purpose of ending the patient’s life. The proposal establishes three new felonies. A person who, without authorization, willfully and deliberately alters, forges, conceals, or destroys a patient’s request, or rescission of request, for a self-administered controlled substance to end his life with the intent and effect of causing the patient’s death would be guilty of a Class 2 felony. A person who coerces, intimidates, or exerts undue influence on a patient to request medication to end his life, or to destroy the patient’s rescission of such request, with the intent and effect of causing the patient’s death would also be guilty of a Class 2 felony. A person who coerces, intimidates, or exerts undue influence on a patient to forgo such medication would also be guilty of a Class 2 felony.¹

Analysis:

As of December 11, 2023, provisions for medical aid in dying have been established in California, Colorado, District of Columbia, Hawaii, Maine, Montana, New Jersey, New Mexico, Oregon, Vermont, and Washington.² According to the Oregon Health Authority, during 2022, 431 people received

¹ The proposed felonies would be 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.

² DeathwithDignity.org. Retrieved December 14, 2023, from <https://deathwithdignity.org/states/>.

prescriptions under the provisions of the state’s Death with Dignity Act. As of January 20, 2023, 278 people had died in 2022 from ingesting the prescribed medications, including 32 who had received prescriptions in previous years. Similar to previous years, of the Death with Dignity deaths in Oregon during 2022, most patients were 65 years of age or older (85%), and most had cancer (64%). Most were in hospice care at the time of their death (91%) and died at home (92%).³

No data are available to estimate the number of people who may pursue this option if the proposal were enacted in Virginia, or the number of people who may violate the felony provisions created by the legislation.

Impact of Proposed Legislation:

State adult correctional facilities. By creating three new Class 2 felony offenses, the proposal may increase the 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. 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 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 additional convictions with supervision requirements for the offenders, the proposal may affect adult community corrections resources. While the potential impact on community corrections resources cannot be quantified, any impact is likely to be small.

Virginia’s Sentencing Guidelines. As new felonies, convictions under the proposed § 54.1-2999.6 would not be covered by the Sentencing Guidelines when the offense is the primary, or most serious, offense in a case. Such a conviction could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. The proposed felony offenses would not be defined as violent under § 17.1-805(C) for the Guidelines purposes. No adjustment to the Guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal’s impact on the bed space needs of juvenile detention facilities cannot be determined.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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² Oregon Health Authority 2022 Data Summary. Retrieved December 14, 2023, from <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year25.pdf>