



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 333 (Patron – Salim)

LD#: 24103626

Date: 01/03/2024

Topic: Misuse of genetic material

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: 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 § 18.2-67.5:01 to make it a Class 3 felony for a health care provider to provide conception treatment to a patient and use the health care provider's own gamete without the written consent of the patient.¹ The proposal also amends §§ 32.1-3 and 32.1-325 and directs the Board of Medical Assistance Services to amend the state plan for medical assistance services to include a provision for payment of medical assistance for coverage of fertility preservation for individuals diagnosed with cancer.

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of Class 3 felony convictions related to health care providers who may misuse genetic material. The proposal places this offense under Title 18.2, Chapter 4, Article 7 (Criminal Sexual Assault), but there are no Class 3 felonies defined in Article 7. Although data is insufficient to determine the number of convictions, defendants may be sentenced similarly to defendants convicted of Class 3 felony sexual offenses, other than prostitution, defined in Title 18.2, Chapter 8 (Crimes Involving Morals and Decency), Articles 3 and 4 (Sexual Offenses, Prostitution, etc.).

According to fiscal year (FY) 2022 and FY2023 Sentencing Guidelines data, five defendants were convicted of a Class 3 felony under §§ 18.2-361 or 18.2-366 for sex offenses between family members (as the primary, or most serious, offense at sentencing). Four of the five defendants (80%) received a state-

¹ As proposed, the felony offense defined in § 18.2-67.5:01 is ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of this offense must serve a minimum of 85% of the sentence ordered by the court.

responsible (prison) term for which the median sentence was 5.5 years. Only one defendant (20.0%) did not receive an active term of incarceration to serve after sentencing.

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. 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 proposed Class 3 felony would not be covered by the Sentencing Guidelines as the primary (most serious) offense in a case; however, such a conviction may augment the Guidelines recommendation (as an additional offense) if a covered offense is the most serious at sentencing. No immediate adjustment to the Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future could conduct detailed analyses of sentencing patterns to determine the feasibility of adding these felonies to the Guidelines system. The new felony offense proposed in § 18.2-67.5:01 would not be defined as violent under § 17.1-805(C) for the purposes of the Guidelines.

Juvenile direct care. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to have an impact on direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to impact the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4 of the Code of Virginia, 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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