



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

June 12, 2013

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The Honorable Bob Goodlatte
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

The Honorable Trent Franks
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

Dear Sirs:

I am in receipt of your letter dated May 7, 2013, in which you ask several questions regarding Virginia's laws protecting newborn infants. You should know that my office has limited authority to prosecute crimes in the Commonwealth and has no direct authority to prosecute the crimes detailed in your letter. Each jurisdiction in the Commonwealth elects its own Commonwealth's attorney to enforce state crimes occurring within its boundaries. Our office does not stand in any supervisory position or have any oversight authority over these constitutional officers. However, notwithstanding the limits of my office's authority, to the extent I can provide some answers and direct you to other prosecutorial resources in the Commonwealth, I will.

1. Do prosecutors in your state treat the deliberate killing of newborns, including those who were delivered alive in the process of abortions, as a criminal offense? If so, have there been any prosecutions in your state for this crime?

Yes, I believe prosecutors in Virginia treat the deliberate killing of newborns, including those delivered alive in the process of abortions as a criminal offense, if the acts violate a criminal statute.

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My Office does not possess prosecutorial statistics on this or any other crimes committed in Virginia. For those statistics, I suggest you contact the following entities:

Supreme Court of Virginia
100 North Ninth Street
Richmond, Virginia 23219
(804) 786-2251

The Virginia Criminal Sentencing Commission
100 N. Ninth Street Richmond, VA 23219
(804) 225-4398
Fax (804) 786-3934
carolyn.williamson@vcsc.virginia.gov

2. **Has the legislature in your state enacted laws, in addition to general laws against homicide or requiring ordinary medical treatment, specifically to protect newborns delivered alive in the process of abortions? If so, how, if at all, have these laws changed prosecutorial practices?**

The Virginia General Assembly has enacted criminal laws specifically related to abortions:

Va. Code § 18.2-71 - producing an abortion or miscarriage

Va. Code § 18.2-71.1 - partial birth infanticide

Va. Code § 18.2-72 - lawful abortions during first trimester

Va. Code § 18.2-73 - when abortion lawful during second trimester

Va. Code § 18.2-74 - when abortion lawful after second trimester

Va. Code § 18.2-74.1 - abortion necessary to save life of woman

I am not aware of how, if at all, the enactment of these laws has changed prosecutorial practices of local prosecutors.

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3. **Does your state have different statutes of limitations for culpability in the death of an infant and culpability in the death of human beings in later stages of development? If so, what is the understood rationale for that difference?**

No. There is no statute of limitation for felonies committed within the Commonwealth.

4. **Have you or your predecessors prosecuted any criminal cases in which a woman has died or suffered serious complications as a result of an abortion? If so, please provide a log of such cases, excluding any personally identifying information.**

My Office has not prosecuted any such case in recent memory. Generally, most crimes are prosecuted by local Commonwealth's Attorneys.

5. **Does your state have laws limiting abortions late in pregnancy? If so, have abortions performed after the statutory limit been prosecuted in your state? If so, please provide a log of such cases, excluding any personally identifying information. If not, are there legal considerations that have prevented such prosecutions from proceeding?**

Yes, see answer to question number two above.

The following organizations may have answers to the remainder of your questions:

Commonwealth's Attorneys' Services Council
William and Mary Law School, Room 220
613 South Henry Street
P.O. Box 3549
Williamsburg, Virginia 23187
(757) 253-4146
cascoff@wm.edu

Supreme Court of Virginia
100 North Ninth Street
Richmond, Virginia 23219
(804) 786-2251

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The Virginia Criminal Sentencing Commission
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6. **Please provide copies of official procedures or guidelines relating to the gathering of information on, or the prosecution of, newborn homicides.**

To my knowledge, no such procedures or guidelines exist.

I hope that my Office has been of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General