



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1165 Floor Amendment in the Nature of a Substitute (Patron Prior to Substitute – Surovell)

LD #: 21103876

Date: 01/28/2021

Topic: Punishment for Class 1 felony offenses

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Direct Care:**
None (\$0) *
- **Juvenile Detention Facilities:**
None (\$0) *

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends numerous statutes in the *Code of Virginia* to reclassify Class 1 felonies to limit the punishment of death and to modify references to the punishment of death from related statutes. Under the proposal, offenders convicted of capital murder of a law-enforcement officer and offenders convicted of capital murder for the killing of more than one person as part of the same act will continue to be eligible for the death penalty if they were at least 18 years of age at the time of the offense and not determined to have an intellectual disability. Offenders convicted of capital murder who were at least 18 years of age at the time of offense may receive a life sentence but they would be ineligible for parole, good conduct allowance, earned sentence credits, or conditional release under § 53.1-40.01 or 53.1-40.02. The remaining offenses currently defined as capital murder under § 18.2-31 would be reclassified as aggravated murder under the proposal and would be subject to a maximum penalty of life in prison. Lastly, if this proposal were enacted by the General Assembly, the provisions would apply to Class 1 felonies committed on or after July 1, 2021.

Currently, under § 18.2-10, an offender convicted of a Class 1 felony who was at least 18 years of age at the time of the offense and is determined not to have an intellectual disability may be sentenced to either death or life imprisonment. Conspiracy to commit an offense punishable by death is a Class 3 felony (§ 18.2-22), while an attempt to commit such an offense is a Class 2 felony (§ 18.2-25).

Analysis:

According to the Department of Corrections (DOC), there were two Virginia inmates serving under a death sentence as of December 1, 2020.¹ One inmate was convicted of capital murder for killing multiple

¹ On November 27, 2018, a third inmate who had been on death row was granted a new sentencing hearing by the United States Fourth Circuit Court of Appeals.

people on the same day. Another inmate was convicted of capital murder for killing a law-enforcement officer. The last individual to enter death row was received in September 2011. No new offenders have entered death row since October 2011. DOC data indicate that inmates remain on death row for an average of 7.1 years prior to execution (based on the last 20 inmates executed). However, individuals currently on death row have served between 13.3 years and 15.7 years. As of December 10, 2020, no execution dates have been set for current death row inmates.

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2015 through FY2020, 34 offenders were convicted of a completed act of capital murder under § 18.2-31. Of these, 32 were given a sentence of life in prison. For the remaining two offenders, the court suspended the life sentence and ordered prison terms of 36 and 38 years, respectively.

Impact of Proposed Legislation:

State adult correctional facilities. By limiting the applicability of the death penalty for Class 1 felonies, the proposed legislation could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the impact of the proposed legislation, which would be effective on July 1, 2021, would apply only to future prosecutions. Two inmates currently serving under a death sentence would not be affected by this proposal. Furthermore, during the most recent nine-year period (October 1, 2011, through December 1, 2020), no offenders have been given a sentence of death. Therefore, it may be assumed that no new offenders would enter death row during the six-year projection window specified by § 30-19.1:4 for legislative impact statements.

Local adult correctional facilities. The proposal will not impact local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal will not affect community corrections programs.

Virginia's sentencing guidelines. Virginia's sentencing guidelines do not cover capital murder offenses defined in § 18.2-31. Attempted capital offenses are covered by the guidelines when there is an accompanying conviction for a crime with a maximum penalty of life imprisonment; in those situations, the attempted capital murder is an additional offense that augments the guidelines recommendation. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the proposal is not expected to impact 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, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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