

Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement

1. Bill Number: SB5018 ER

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron: Bell

3. Committee: Passed both Houses

4. Title: Conditional release of terminally ill prisoners.

5. Summary: This bill provides that any person serving a sentence imposed upon a conviction for a felony offense, who is terminally ill is eligible for consideration by the Parole Board for conditional release. The bill defines terminally ill to mean having a chronic or progressive medical condition caused by injury, disease, or illness where the medical prognosis is the person's death within 12 months.

However, a person who is terminally ill and is serving a sentence imposed upon a conviction for one of the following offenses is not be eligible to petition the Parole Board for conditional release:

- 1) A Class 1 felony
- 2) Any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33 (pertaining to certain homicide crimes);
- 3) Any violation of § 18.2-40 or 18.2-45 (pertaining to lynching and mob-attempted lynching);
- 4) Any violation of § 18.2-46.5 (committing, conspiring and aiding and abetting acts of terrorism), subsection A or B of § 18.2-46.6 (possession, manufacture, distribution, etc. of weapon of terrorism or hoax device); or § 18.2-46.7 (bioterrorism against agricultural crops or animals);
- 5) Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2, except for a violation of § 18.2-49.1 (violation of court order regarding custody and visitation);
- 6) Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, any violation of § 18.2-51.7 (female genital mutilation), 18.2-54.1 (attempts to poison), or 18.2-54.2 (adulteration of food, drink, drugs, cosmetics, etc.), or any felony violation of § 18.2-57.2 (assault and battery against a family or household member);
- 7) Any felony violation of § 18.2-60.3 (stalking);
- 8) Any felony violation of § 16.1-253.2 or 18.2-60.4 (pertaining to violation of provisions of protective orders);
- 9) Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
- 10) Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, except, when not committed against a minor, a violation of subdivision A 5 of § 18.2-67.3 (aggravated sexual battery when offense is not a recognized form of treatment in

certain professions, without the consent of the patient), § 18.2-67.4:1 (infected sexual battery), subsection B of § 18.2-67.5 (felony aggravated sexual battery), or § 18.2-67.5:1 (third misdemeanor offense of certain criminal sexual assault);

- 11) Any violation of § 18.2-90 (entering dwelling house, etc., with intent to commit murder, rape, robbery or arson) or 18.2-93 (entering bank, armed, with intent to commit larceny);
- 12) Any violation of § 18.2-289 (use of machine gun for crime of violence) or subsection A of § 18.2-300 (possession or use of "sawed-off" shotgun or rifle);
- 13) Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2 involving a minor (prostitution; commercial sexual conduct; commercial exploitation of a minor);
- 14) Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2 involving a minor victim (pertaining to certain family offenses; crimes against children) or 18.2-370.5, except for a violation of § 18.2-362 (pertaining to bigamy), § 18.2-370.5 (offenses prohibiting entry onto school or other property) or subsection B of § 18.2-371.1 (pertaining to reckless disregard for human life by a parent, guardian, or other person responsible for the care of a child under the age of 18);
- 15) Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 involving a minor (pertaining to crimes involving morals and decency), except for a violation of subsection A of § 18.2-374.1:1 (knowingly possessing child pornography);
- 16) Any violation of § 18.2-481 (defines treason), 40.1-100.2 (employment involving sexually explicit visual material prohibited), or 40.1-103 (cruelty and injuries to children; penalty; abandoned infant); or
- 17) A second or subsequent violation of the following offenses, in any combination, when such offenses were not part of a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-151 between each conviction:
 - a) Voluntary or involuntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2 or any crime punishable as such;
 - b) Any violation of § 18.2-41 (shooting, stabbing, etc., with intent to maim, kill, etc., by mob) or felony violation of § 18.2-42.1 (acts of violence by mob);
 - c) Any violation of § 18.2-46.6 (pertaining to the possession, manufacture, distribution, etc. of weapon of terrorism or hoax device prohibited);
 - d) Any violation when done unlawfully but not maliciously of § 18.2-51 (shooting, stabbing, etc., with intent to maim, kill) or § 18.2-51.1 (malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel);
 - e) Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79 (burning or destroying meeting house, etc.);
 - f) Any violation of § 18.2-89 (burglary) with the intent for commit larceny or 18.2-92 (breaking and entering dwelling house with intent to commit other misdemeanor);
 - g) Any violation of subsection A of § 18.2-374.1:1 (possession, reproduction, distribution, solicitation, and facilitation of child pornography);
 - h) Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, all of which pertain to displaying items or symbols in certain places with the intent to intimidate, or 18.2-433.2 (pertaining to prohibited paramilitary activity); or
 - i) Any violation of subdivision E 2 of § 40.1-29 (pertaining to failing to pay wages of \$10,000 or more with the intent to defraud).

The bill also requires the Parole Board to promulgate regulations to implement the provisions of this section.

- 6. Budget Amendment Necessary:** Yes. Item 429.
- 7. Fiscal Impact Estimates:** Final. See Item 8 below.
- 8. Fiscal Implications:** The bill defines terminally ill as having a chronic or progressive medical condition caused by injury, disease, or illness where the medical prognosis is the person's death within 12 months. DOC estimates that on average, it may have approximately 16 terminally ill inmates within an annual period. Based on the excluded offenses set out in the substitute bill, DOC estimates that approximately 50 percent of terminally ill offenders would become ineligible for conditional release. However, according to DOC, only eight offenders in a given year may qualify to petition for parole under the provisions of the substitute bill. DOC reports that it spends approximately an average of \$84,000 per individual during the last 12 months of an inmate's life for offsite medical, pharmaceutical, and housing costs. In the event that release occurs with only six months of life remaining, DOC estimates that savings would be reduced to approximately \$50,000 per individual, and if the inmate is released with three months of life remaining, the approximate savings per individual is reduced to approximately \$30,000 per individual.

Although the bill increases the number of offenders who are eligible for parole and allows certain terminally ill offenders to petition for parole, it is not possible to know how many of these may be granted parole. Any savings associated with this bill are dependent upon the number of offenders actually released from prison. Further, DOC reports that in order for offenders to be released, housing placement must be secured for them in the community before they are released. In the event that housing placement cannot be secured for an offender, the individual would remain in the care of DOC for public safety reasons, and any associated savings would not be realized.

According to the Parole Board, one additional part-time parole examiner, at an estimated cost of \$39,023 per year, would be required to review parole considerations for offenders made eligible for parole under the provisions of this bill.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Virginia Parole Board
- 10. Technical Amendment Necessary:** No
- 11. Other Comments:** Chapter 1289, 2020 Acts of Assembly, contains the following language in Item 429, relating to conditional geriatric release:

Notwithstanding the provisions of § 53.1-40.01, Code of Virginia, the Parole Board shall annually consider for conditional release those inmates who meet the criteria for conditional geriatric release set out in § 53.1-40.01, Code of Virginia, except that upon any such review the Board may schedule the next review as many as three years thereafter. If any such inmate is also eligible for discretionary parole under the provisions of § 53.1-151 et seq., Code of

Virginia, the board shall not be required to consider that inmate for conditional geriatric release unless the inmate petitions the board for conditional geriatric release.