

## Department of Planning and Budget 2022 Fiscal Impact Statement

**1. Bill Number:** HB661

**House of Origin**     Introduced     Substitute     Engrossed  
**Second House**     In Committee     Substitute     Enrolled

**2. Patron:**    Wampler

**3. Committee:** Committee for Courts of Justice

**4. Title:**    Capital murder; death penalty for the willful, deliberate, and premeditated killing.

**5. Summary:** The proposed legislation authorizes punishment by death for the willful, deliberate, and premeditated killing of a law-enforcement officer.

**6. Budget Amendment Necessary:** Yes. Item 51.

**7. Fiscal Impact Estimates:** Preliminary (see Item 8 below).

**8. Fiscal Implications:** Chapters 344 and 345 of the 2021 Acts of Assembly abolished the death penalty and redefined capital murder as aggravated murder, effective July 1, 2021. Under the current law, for an offender who was at least 18 years of age at the time of the offense and is determined not to have an intellectual disability, the punishment for willful, deliberate, and premeditated killing of a law enforcement officer is considered aggravated murder, which is punishable as a Class 1 felony. The authorized punishment for Class 1 felonies is imprisonment for life. The proposed legislation would redefine this crime as capital murder and authorize punishment by death.

According to the Department of Corrections (DOC), two Virginia inmates were serving under a death sentence before the death penalty was abolished effective on July 1, 2021. The last individual to enter death row was received in September 2011. Based on the last 20 inmates executed before the death penalty was abolished, the average time on death row was 7.1 years prior to execution.

The Virginia Indigent Defense Commission estimates it would need to open up one capital defender office as a result of the proposed legislation. The cost to open one office is \$1,063,882 annually. In addition, the Virginia Indigent Defense Commission also expects funding for travel to increase as a result but the cost is indeterminate at this time.

The introduced budget (HB30/SB30) reduced the pass through general fund appropriation (\$325,500 for each fiscal year) to the Virginia Capital Resource Center via the Virginia State Bar as a result of abolishing the death penalty in the Commonwealth. The funding was used to provide direct representation in death penalty cases and assist attorneys representing

convicted offenders. It is not known at this time if additional resources would be needed for the same services as a result of this legislation.

According to the Circuit Court Case Management System (CMS) for FY2016 through FY2021, 26 offenders were convicted of a completed act of capital murder under § 18.2-31. Of these, 24 were sentenced to life in prison. The life sentence was suspended for the remaining two offenders who were instead sentenced to prison terms of 36 and 38 years. However, it should be noted that this data does not distinguish capital murder of a law enforcement officer from other types of capital murder (currently aggravated murder) so the number of offenders that would have been sentenced to death under the proposed legislation cannot be determined at this time.

According to the Virginia Criminal Sentencing Commission, the proposed legislation is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth because no offenders were sentenced to death during the most recent ten-year period (October 1, 2011, through July 1, 2021) before the death penalty was abolished. In addition, based on historical data, offenders are likely to remain in the state-responsible population throughout the six-year period following enactment. Therefore, the proposal is not likely to impact state-responsible (prison) bed space needs during the six-year projection window required by § 30-19.1:4.

According to the Department of Juvenile Justice (DJJ), the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined, and DJJ also reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

**9. Specific Agency or Political Subdivisions Affected:** Virginia Indigent Defense Commission, Virginia State Bar, Commonwealth's Attorneys, Courts, Department of Corrections.

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None