



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 802 (Patron – Favola)

LD #: 18104061

Date: 1/05/2018

Topic: Punishment for Class 1 felony offenses

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Direct Care:**
Cannot be determined**
- **Juvenile Detention Facilities:**
Cannot be determined**

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 19.2-264.3:1.4 to eliminate the death penalty for defendants charged with capital offenses who were determined by a judge or jury to have had a severe mental illness at the time the crime was committed; in such cases, the defendant would be sentenced to life imprisonment. The proposal defines numerous terms related to severe mental illness and specifies procedures for conducting mental health evaluations of defendants charged with capital offenses and introducing such evidence at trial.

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. For individuals who were under the age of 18 at the time of the offense or who have an intellectual disability, the penalty is life imprisonment.

Analysis:

According to the Department of Corrections (DOC), there were four Virginia inmates serving under a death sentence as of November 17, 2017. The last individual to enter death row was received in September 2011. No new offenders have entered death row since October 2011. According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2012 through FY2017, 37 offenders were convicted of completed capital murder under § 18.2-31 as the primary (most serious) offense and were given a sentence of life in prison.

DOC data indicate that inmates remain on death row for an average of 6.2 years prior to execution (based on the last 30 inmates executed). However, individuals currently on death row have served between 6.4

years and 17.5 years (as of November 17, 2017). As of November 20, 2017, no execution dates have been set for current death row inmates.

Impact of Proposed Legislation:

State adult correctional facilities. By removing the applicability of the death penalty in cases where the offender is determined to have a severe mental illness, the proposed legislation may increase the state-responsible (prison) bed space needs of the Commonwealth. Per § 30-19.1:4, the Commission must estimate the increase in operating costs to the Department of Corrections due to increases in periods of imprisonment; this section does not authorize the Commission to consider any other potential costs or savings that may be associated with the legislation.

Existing data do not provide sufficient detail to estimate the number of individuals who would be sentenced to a term of life imprisonment instead of death if the proposal is enacted. While the impact on prison bed space needs cannot be determined, any impact is likely to be small. When the impact cannot be determined, Chapter 836 of the 2017 Acts of Assembly requires the Commission to assign a minimum fiscal impact of \$50,000.

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

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

Virginia's sentencing guidelines. Virginia's sentencing guidelines do not cover completed acts of capital murder. 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 impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the 2017 Acts of Assembly 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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