Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 85

(Patron – Carter)

LD #: 20100843 **Date:** 12/10/2019

Topic: Punishment for Class 1 felony offenses

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $72,630 (2 beds)
- **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 eliminate the punishment of death for Class 1 felonies and to remove references to the punishment of death from related statutes. Under the proposed changes, an offender convicted of a Class 1 felony must be sentenced to imprisonment for life and would be ineligible for parole, good conduct allowance, earned sentence credits, or conditional release under § 53.1-40.01. The provisions of the proposal would apply to Class 1 felonies sentenced on or after July 1, 2020. In addition, any person under a sentence of death imposed prior to July 1, 2020, who has not been executed by that date would have his sentence changed to life imprisonment and would be ineligible for parole, good conduct allowance, sentence credits, or conditional release.

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 9, 2019.[1] 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

[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.

executed). However, individuals currently on death row have served between 12.4 years and 14.7 years. As of December 9, 2019, no execution dates have been set for current death row inmates.

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2014 through FY2019, 38 offenders were convicted of a completed act of capital murder under § 18.2-31. Of these, 36 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 eliminating the death penalty, the proposed legislation is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. It is estimated that the proposal would result in the need for approximately two additional state-responsible (prison) beds by FY2026. Pursuant to § 30-19.1:4, the estimated necessary appropriation is $72,630.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY21	FY22	FY23	FY24	FY25	FY26
0	0	1	2	2	2

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 $72,630 for periods of imprisonment in state adult correctional facilities and $0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. Cost per prison bed was assumed to be $36,315 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***

Assumptions relating to affected cases

1. The impact of the proposed legislation, which would be effective on July 1, 2020, is applied to future prosecutions, as well as inmates serving under a death sentence on December 9, 2019.
2. The number of future cases affected by the proposal was assumed to be zero. During the most recent eight-year period (October 1, 2011, through December 9, 2019), no offenders have been given a sentence of death. Therefore, it was 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.

Assumptions relating to sentencing/time served

1. Given the status of legal processes for the current death row inmates, it was assumed that, absent the proposed legislation, one inmate would be executed sometime during FY2023 and the other would be executed sometime during FY2024.
2. Offenders affected by the proposal were assumed to remain in the state-responsible population throughout the six-year forecast horizon.

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