Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 116

(Patron – Favola)

LD #: 20101740 **Date:** 12/10/2019

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 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 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 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.

[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.

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 removing the applicability of the death penalty in cases where the offender is determined to have a severe mental illness, the proposed legislation could increase the future state-responsible (prison) bed space needs of the Commonwealth. In the six most recent fiscal years, however, no defendant convicted of capital murder has received a death sentence. Therefore, given the available data, the proposal is unlikely to have an impact on prison beds during the six-year window specified by § 30-19.1:4 for legislative impact statements.

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 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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