

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: SB811S1

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Morrissey

3. Committee: Senate Committee on the Judiciary

4. Title: Determining the sentence of a guilty defendant

5. Summary: The substitute bill establishes that the defendant may request the jury determine his punishment in cases where the jury finds the defendant guilty of an offense for which the death penalty may not be imposed.

In addition, the bill states that if a person is found guilty of capital murder by a jury, the court shall determine the punishment, unless the accused has requested the jury determines his punishment. The exception being capital murder.

Under the provisions of the bill, the court determines the punishment for an offender who is sentenced to a term of confinement in a state correctional facility or jail and the amount of any fines unless the accused is tried by a jury and has requested the jury determine his punishment at least 30 days prior trial. When the accused is tried by a jury, deliberations of the jury shall be confined to a determination of the guilt or innocence of the accused, except that when the determination of punishment by the jury has been requested by the accused. When a jury has been properly requested to determine the sentence of an offender, a separate proceeding should be held as soon as practicable.

In the case of trial by jury and when the accused has requested the jury to determine punishment, the court shall permit the victim to testify at the sentencing hearing conducted. In all other cases of trial by jury, the case of trial by the court, or the case of a guilty plea, the court shall permit the victim to testify before the court prior to the imposition of a the sentence by the presiding judge.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Indeterminate (see Item #8)

8. Fiscal Implications: Under current law in criminal prosecutions, the accused is entitled to a trial by jury only on a plea of not guilty. On a plea of guilty or nolo contendere, the case is heard and determined by the judge.

The substitute bill would allow an accused who was found guilty by a jury to request that the jury determines his punishment. It is possible the bill could result in an increase in the number of jury trials in the Commonwealth. However, sufficient data does not exist to estimate the fiscal impact on the resources of the criminal justice system.

9. Specific Agency or Political Subdivisions Affected: Courts, local attorneys for the Commonwealth, Virginia Indigent Defense Commission and circuit court clerks

10. Technical Amendment Necessary: No

11. Other Comments: None