

Department of Planning and Budget

2021 Special Session I - Fiscal Impact Statement

1. Bill Number: SB1165 ER

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

2. Patron: Surovell

3. Committee: Passed both houses

4. Title: Abolition of the death penalty.

5. Summary: Under current law, 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. The enrolled bill amends numerous statutes in the Code of Virginia to eliminate death as a penalty 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 who was 18 years of age or older at the time of the offense 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, which pertains to conditional release of geriatric prisoners or § 53.1-40.02, which pertains to conditional release of terminally ill prisoners, as it becomes effective March 1, 2021. The provisions of the proposal would apply to Class 1 felonies sentenced on or after July 1, 2021. Any person who was 18 years of age or older at the time of the offense, who received a sentence of death before July 1, 2021, and 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. The enrolled bill provides that, notwithstanding any other provision of law, no person may be sentenced to death or put to death on or after the effective date of this act for any violation of law.

The proposal removes the requirement for the Department of Forensic Science to store, preserve, and retain evidence specific to cases where the death penalty is imposed. The bill also removes the requirement for the Board of Pharmacy to report annually to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions on (i) the number of outsourcing facilities permitted or registered by the Board that have entered into a contract with the Department of Corrections for the compounding of drugs necessary to carry out an execution by lethal injection pursuant to § 53.1-234 (Transfer of prisoner; how death sentence executed; who to be present) and (ii) the name of any such outsourcing facilities that received disciplinary action for a violation of law or regulation related to compounding.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Final. See Item 8 below.

- 8. Fiscal Implications:** According to the Department of Corrections, there were two Virginia inmates serving death sentences as of December 1, 2020. The Virginia Criminal Sentencing Commission (VCSC) reports that, according to the Circuit Court Case Management System (CMS) for FY 2015 through FY 2020, 34 offenders were convicted of a completed act of capital murder under § 18.2-31 (defines capital murder and establishes penalty). Of these, 32 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.

Based on DOC data reviewed by the VCSC, inmates remain on death row for an average of 7.1 years prior to execution (based on the last 20 inmates executed). As of December 10, 2020, no execution date has been set for these two inmates currently on death row. By eliminating the death penalty, the proposed legislation is expected to increase the state-responsible prison space needs of the Commonwealth. Pursuant to §30-19.1:4 of the Code of Virginia, the Virginia Criminal Sentencing Commission estimates a fiscal impact of \$77,376. The amount is based on the projection that the legislation will result in the need for two additional prison beds. However, the two individuals currently on death row have served between 13.3 and 17.7 years, therefore it is expected that the Department of Corrections can absorb this cost. This legislation will not affect local-responsible (jail) bed space needs.

Currently, there are 29 employees in four regional offices of the Indigent Defense Commission (IDC) that handle only capital cases. If the death penalty is repealed under this bill, it is expected that the functions of these offices will be no longer needed after the current case load is completed. According to the IDC, the budget for the four Capital Defender offices is \$3.9 million annually.

According to the Department of Forensic Science, the Office of Attorney General, and the Virginia Board of Pharmacy (Department of Health Professions), this bill is not expected to impact agency operations.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Indigent Defense Commission, Department of Forensic Science, Virginia Board of Pharmacy

10. Technical Amendment Necessary: None

11. Other Comments: None