



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 394

(Patron – Griffin)

LD #: 24103414

Date: 01/03/2024

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:**  
Cannot be determined \*\*
- **Juvenile Detention Facilities:**  
Cannot be determined \*\*

\*\* Provided by the Department of Juvenile Justice

\* Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

#### Summary of Proposed Legislation:

The proposal amends numerous statutes in the *Code of Virginia* to re-establish the punishment of death for offenses defined as Class 1 felonies and to include references to the punishment of death in related statutes. The proposal adds several statutes to the *Code* to specify protocols for execution of death sentence, commutation of capital punishment, trial of capital cases, counsel in capital cases, and review of death sentences.

According to the proposed changes 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. The proposal also specifies that 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).

The 2021 General Assembly (Special Session I) adopted legislation to abolish death penalty for Class 1 felonies. Under the current law, the punishment for a Class 1 felony (now defined as aggravated murder) is imprisonment for life. Such offender who was 18 years of age or older at the time of the offense and sentenced to life is ineligible for parole, good conduct allowance, earned sentence credits, or conditional release under §§ 53.1-40.01 or 53.1-40.02. For any person under a sentence of death imposed prior to July 1, 2021, who had not been executed by that date, the sentence was changed to life imprisonment.

#### Analysis:

According to the Department of Corrections (DOC), there were two Virginia inmates serving under a death sentence before the abolishment of the death penalty for Class 1 felonies became effective on July 1, 2021. The last individual to enter death row was received in September 2011. Before the current law (defining aggravated murder) became effective on July 1, 2021, inmates had remained on death row for an average of 7.1 years prior to execution (based on the last 20 inmates executed).

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2016 through FY2021, 26 defendants were convicted of a completed act of capital murder under § 18.2-31. Of these, 24 were given a sentence of life in prison. For the remaining two defendants, the court suspended the life sentence and ordered prison terms of 36 and 38 years, respectively.

Circuit Court CMS indicate that, during FY2022 and FY2023, 22 defendants were convicted under § 18.2-31 as the primary, or most serious, offense (includes defendants convicted of completed, attempted and conspired acts). Five of the 22 defendants were convicted of a completed act. Three of the five defendants convicted of a completed act were sentenced to life in prison; the remaining two defendants were sentenced to active terms of 63 years and 128 years, respectively.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Re-establishing the death penalty for Class 1 felonies is not expected to increase the overall state-responsible (prison) bed space needs of the Commonwealth. Between October 1, 2011, and July 1, 2021, no offenders had been given a sentence of death. Furthermore, if any offenders are given a death sentence as a result of the proposal, they may remain on death row throughout the six-year projection period or they may be executed sometime during the six-year window. Neither scenario will increase the need for state prison beds.

**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 aggravated murder offenses defined in § 18.2-31, nor did they cover capital murder offenses prior to July 1, 2021. No adjustment to the Guidelines would be necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice (DJJ), 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.

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**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**