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SENATE BILL NO. 79

Offered January 12, 2022

Prefiled January 5, 2022

A BILL to amend and reenact §§ 18.2-10 and 18.2-31 of the Code of Virginia, relating to Class 1 felonies; mandatory minimum term of imprisonment for life.

Patron—Stanley

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-10 and 18.2-31 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-10. Punishment for conviction of felony; penalty.**

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, *if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be a person with intellectual disability, as defined in § 37.2-100, a mandatory minimum term of imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under 18 years of age at the time of the offense or is determined to be a person with intellectual disability, as defined in § 37.2-100, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.* Any person who was 18 years of age or older at the time of the offense and who is sentenced to imprisonment for life upon conviction of a Class 1 felony shall not be eligible for (i) parole, (ii) any good conduct allowance or any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1, or (iii) conditional release pursuant to § 53.1-40.01 or 53.1-40.02.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of incarceration of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.

§ 18.2-31. Aggravated murder defined; punishment.

A. The following offenses shall constitute aggravated murder, punishable as a Class 1 felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

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59 5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent
60 to, rape or attempted rape, forcible sodomy, or attempted forcible sodomy or object sexual penetration;

61 6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in
62 § 9.1-101, a fire marshal appointed pursuant to § 27-30 or a deputy or an assistant fire marshal
63 appointed pursuant to § 27-36, when such fire marshal or deputy or assistant fire marshal has police
64 powers as set forth in §§ 27-34.2 and 27-34.2:1, an auxiliary police officer appointed or provided for
65 pursuant to §§ 15.2-1731 and 15.2-1733, an auxiliary deputy sheriff appointed pursuant to § 15.2-1603,
66 or any law-enforcement officer of another state or the United States having the power to arrest for a
67 felony under the laws of such state or the United States, when such killing is for the purpose of
68 interfering with the performance of his official duties;

69 7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act
70 or transaction;

71 8. The willful, deliberate, and premeditated killing of more than one person within a three-year
72 period;

73 9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted
74 commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such
75 killing is for the purpose of furthering the commission or attempted commission of such violation;

76 10. The willful, deliberate, and premeditated killing of any person by another pursuant to the
77 direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection I
78 of § 18.2-248;

79 11. The willful, deliberate, and premeditated killing of a pregnant woman by one who knows that the
80 woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy
81 without a live birth;

82 12. The willful, deliberate, and premeditated killing of a person under the age of 14 by a person age
83 21 or older;

84 13. The willful, deliberate, and premeditated killing of any person by another in the commission of
85 or attempted commission of an act of terrorism as defined in § 18.2-46.4;

86 14. The willful, deliberate, and premeditated killing of a justice of the Supreme Court, a judge of the
87 Court of Appeals, a judge of a circuit court or district court, a retired judge sitting by designation or
88 under temporary recall, or a substitute judge appointed under § 16.1-69.9:1 when the killing is for the
89 purpose of interfering with his official duties as a judge; and

90 15. The willful, deliberate, and premeditated killing of any witness in a criminal case after a
91 subpoena has been issued for such witness by the court, the clerk, or an attorney, when the killing is for
92 the purpose of interfering with the person's duties in such case.

93 B. For a violation of subdivision A 6 where the offender was 18 years of age or older at the time of
94 the offense, the punishment shall be no less than a mandatory minimum term of confinement for life.

95 C. If any one or more subsections, sentences, or parts of this section shall be judged unconstitutional
96 or invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof but
97 shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

98 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
99 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
100 **necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and**
101 **\$0 for periods of commitment to the custody of the Department of Juvenile Justice.**