



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 661

(Patron – Wampler)

LD #: 22101175

Date: 01/05/2022

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 establish the punishment of death for certain Class 1 felonies and to include references to the punishment of death in related statutes. The proposal also 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, for an offender convicted of a Class 1 felony classified as capital murder (as defined in the proposal) who was at least 18 years of age at the time of the offense and is determined not to have an intellectual disability, the authorized punishment is death. For a violation of capital murder where the offender was younger than 18 years of age at the time of the offense or is determined to be a person with intellectual disability, the punishment is life imprisonment. Under the proposed § 18.2-10 (A), the following offenses shall constitute capital murder:

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

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 (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. Moreover, with the new legislation in effect, 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 had been two Virginia inmates serving under a death sentence before the abolishment of 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 (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 offenders 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 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 establishing the death penalty for certain Class 1 felonies, the proposed legislation is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth. During the most recent ten-year period (October 1, 2011, through July 1, 2021) prior to the new legislation in effect, no offenders had been given a sentence of death. Furthermore, if offenders are affected by the proposal in a future, they are likely to remain in the state-responsible population throughout the six-year period following enactment (based on the historical data). Therefore, the proposal is not likely to impact state-responsible (prison) bed space needs during the six-year projection window required by § 30-19.1:4.

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. The Sentencing Guidelines do not cover capital/aggravated murder offenses defined in § 18.2-31. 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.

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.