

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: SB104 S1

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

2. Patron: Morrissey

3. Committee: Judiciary

4. Title: Mandatory minimum sentences; elimination, modification of sentence to mandatory minimum term.

5. Summary: This bill eliminates mandatory minimum sentences of confinement from the Code of Virginia except for aggravated murder of a law-enforcement officer, which, pursuant to § 18.2-3 (Aggravated murder defined; punishment), is punishable as a Class 1 felony with a mandatory minimum term of confinement for life if the offender was 18 years of age or older at the time of the offense. The substitute version incorporates SB252.

The bill directs the Secretary of Public Safety and Homeland Security to establish a work group to evaluate the feasibility of resentencing persons previously convicted of a felony offense that was punishable by a mandatory minimum term of confinement. The work group must provide recommendations related to potential procedures for conducting such resentencing hearings and collect data concerning the number of persons who may be eligible for a resentencing hearing, the offenses for which such persons were convicted, the sentences that such persons received, and the number of years such persons have served for the offense for which there was a mandatory minimum term of confinement. The work group is required to report its findings and recommendations to the Governor and the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by November 1, 2022.

6. Budget Amendment Necessary: No

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

8. Fiscal Implications: This proposal eliminates mandatory minimum sentences imposed for the crimes enumerated in the bill. According to the Virginia Criminal Sentencing Commission (VCSC), when the sentencing guidelines recommend a sentence that is less than the mandatory minimum penalty required by law, the guidelines preparer must enter the mandatory minimum penalty for any part of the guidelines range (be it the low, midpoint, or high) that falls below the mandatory minimum sentence. If the legislation is enacted, guidelines preparers would cease making any such adjustments to the recommended range. Also, a few guideline worksheets contain specific factors pertaining to mandatory minimum penalties (e.g., Section A of the Drug/Schedule I/II guidelines). If the legislation is enacted, those factors would no longer be scored.

VCSC staff analyzed FY 2017 through FY 2021 felony sentencing events and found that 11.3 percent of felony sentencing events included at least one offense requiring a mandatory minimum sentence (the mandatory minimum offense could have been a felony or a misdemeanor) and that, of the felony sentencing events with at least one mandatory minimum offense, 35.1 percent had the guidelines recommended range adjusted (i.e., some part of the guidelines range was lower than the required mandatory minimum and was therefore replaced with the mandatory minimum). Data from the Department of Corrections is not currently available to determine potential impact on bed capacity changes resulting from the elimination of mandatory minimum sentences. Should additional information become available, the fiscal impact statement will be revised.

The resentencing study required by this bill is not expected to have a material fiscal impact on the Secretary of Public Safety and Homeland Security's Office.

- 9. Specific Agency or Political Subdivisions Affected:** Secretary of Public Safety and Homeland Security, the Department of Corrections, the Virginia Sentencing Commission the Virginia Indigent Defense Commission, the Virginia Association of Commonwealth's Attorneys, local and regional jails, courts

10. Technical Amendment Necessary: No

11. Other Comments: None