



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 308

(Patron – Ballard)

LD#: 24101677

Date: 12/18/2023

Topic: Conditional release of geriatric prisoners

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: None (\$0)* • Local Adult Correctional Facilities: None (\$0) • Adult Community Corrections Programs: None (\$0) 	<ul style="list-style-type: none"> • Juvenile Direct Care: None (\$0)** • Juvenile Detention Facilities: None (\$0)** <p>** Provided by the Department of Juvenile Justice</p>
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* 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 § 53.1-40.01, relating to conditional release of geriatric inmates. Currently, an inmate serving a sentence for a felony, other than a Class 1 felony, (i) who has reached the age of sixty-five or older having served at least five years of the sentence or (ii) who has reached the age of sixty or older having served at least ten years of the sentence may petition the Parole Board for conditional release.

Under the proposal, for crimes committed on or after July 1, 2024, defendants serving prison time for other felony offenses would be ineligible for geriatric release consideration. The proposal would add the following felony offenses as disqualifiers for geriatric release:

- First-degree murder (§ 18.2-32)
- Second-degree murder (§ 18.2-32)
- Murder of pregnant victim without premeditation (§ 18.2-32.1)
- Murder of fetus of another (§ 18.2-32.2)
- Felony murder (§ 18.2-33)
- Murder as the result of a lynching or attempted lynching (§§18.2-40 or 18.2-45)
- Terrorist act (§ 18.2-46.5)
- Possession of weapon or imitation weapon with intent to terrorize (§ 19.2-46.6 (A or B))
- Biological destruction of crops or animals (§ 18.2-46.7)
- Abduction or kidnapping (§§ 18.2-47, 18.2-48, 18.2-48.1, or 18.2-49)
- Malicious assault or malicious bodily wounding (§§ 18.2-51, 18.2-51.1, or 18.2-51.2)
- Genital mutilation (§18.2-51.7)
- Poisoning (§§ 18.2-54.1 or 18.2-54.2)

- Assault against a family member, third or subsequent (§ 18.2-57.2)
- Robbery (§ 18.2-58)
- Carjacking (§ 18.2-58.1)
- Stalking (§ 18.2-60.3)
- Protective order violation (§§ 16.1-253.2 or 18.2-60.4)
- Sexual assault or rape (Article 7 of Chapter 4 of Title 18.2, §§ 18.2-61 – 18.2-67.3)
- Aggravated sexual battery (§ 18.2-67.3, except if § 18.2-67.3 (A,5) is against a minor)
- Sexual behavior with intent to transmit an infection (§ 18.2-67.4:1)
- Attempt to commit a sexual act (§ 18.2-67.5)
- Sexual abuse, third or subsequent (§ 18.2-67.5:1)
- Burglary with intent to commit murder, rape, robbery or arson (§ 18.2-90)
- Entering bank armed with intent to commit larceny (§ 18.2-93)
- Possession of machine gun in perpetration of a crime (§ 18.2-289)
- Possession of sawed-off shotgun in perpetration of a crime (§ 18.2-300 (A))
- Prostitution involving a minor (Article 3 of Chapter 8 of Title 18.2, §§ 18.2-346 – 18.2-361)
- Incest involving a minor (§ 18.2-366)
- Pandering involving a minor (§ 18.2-368)
- Indecent liberties involving a minor (§ 18.2-370 and § 18.2-370.1)
- Near school, etc., after conviction prohibits proximity to children (§§ 18.2-370.2 – 18.2-370.4)
- Child abuse and neglect with serious injury (§ 18.2-371.1 (A))
- Pornography involving a minor (Article 5 of Chapter 8 of Title 18.2, §§ 18.2-374 – 18.2-386.1), except for the first offense of possessing child pornography (§ 18.2-374.1:1(A))
- Treason, levying war against national or state government (§ 18.2-481)
- Permit minor to perform in sexually explicit material (§ 40.1-100.2)
- Cruelty to children (§ 40.1-103)
- Second or subsequent convictions for any of the following (if the offender has been at liberty between each conviction as defined in § 53.1-151):
 - Maliciously or unlawfully shoot, cut, wound, or stab by mob (§ 18.2-41)
 - Act of violence as defined in § 19.2-297.1 committed by a mob (§ 18.2-42.1)
 - Terrorism, possession of imitation weapon with intent to intimidate (§ 18.2-46.6(C))
 - Unlawful wounding (§§ 18.2-51 or 18.2-51.1)
 - Arson of occupied structure (§ 18.2-77)
 - Arson of occupied public building (§ 18.2-79)
 - Burglary of dwelling at night (§ 18.2-89)
 - Burglary with intent to commit larceny (§ 18.2-92)
 - Pornography involving a minor, first offense of possessing child pornography (§ 18.2-374.1:1(A))
 - Burn cross to intimidate (§ 18.2-423)
 - Burn object on private or public property with intent to intimidate (§ 18.2-423.01)
 - Swastika, use to intimidate (§ 18.2-423.1)
 - Noose, use to intimidate (§ 18.2-423.2)
 - Withhold wages \$10,000 or more or second or subsequent offense (§ 40.1-29).

Analysis:

According to the Virginia Department of Corrections (DOC), a total of 3,282 inmates were considered for geriatric release during FY2020-FY2023. Of those considered during the four-year period, 125 inmates (3.8%) were granted release under the geriatric provision.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal would reduce the number of inmates eligible for geriatric release under § 53.1-40.01. However, the proposal applies to offenses committed on or after July 1, 2024, and would not affect the eligibility of current inmates. To become eligible for geriatric release, an inmate must serve a minimum of five or ten years, depending on his or her age. Given the prospective (rather than retroactive) application of the proposal, felony case processing time in circuit courts (which averages about 11 months), and the Parole Board’s low grant rate for geriatric release, designating certain future inmates as ineligible for geriatric release is unlikely to have an impact on state-responsible (prison) bed space needs during the six-year window specified by § 30-19.1:4 for legislative impact statements.¹

Local adult correctional facilities. Because the proposal applies to state inmates, it is not expected to have an impact on local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal is not expected to increase the need for state or local community corrections resources in Virginia.

Virginia’s sentencing guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the proposal is not expected to impact direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to impact the bed space needs of juvenile detention facilities.

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 \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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