



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1683

Amendment in the Nature of a Substitute

(Patrons Prior to Substitute – McDougle and Hargrove)

Date Submitted: 1/16/03

LD #: 03-0369838

Topic: Offenses against two or more statutes

Proposed Change:

The proposed legislation amends § 19.2-294 of the *Code of Virginia* regarding prosecution of an offense that violates two or more statutes or ordinances. The amendment replaces prosecution with conviction, and deletes the paragraph that defines prosecution under a federal statute.

Current Practice:

Under the current *Code of Virginia*, § 19.2-294 bars prosecution under the state statute when federal prosecution has already been obtained for the same act. As of July 1, 2002, these provisions do not apply to acts of terrorism as defined by § 18.2-46.4.

Impact of Proposed Legislation:

The proposed legislation removes the specific provision that state prosecution may not be sought for the same act once a conviction has been obtained under federal law. Therefore, the amendment will allow the state to seek prosecution for the same act prosecuted under the federal system. Furthermore, the Supreme Court has held that prosecution of the same act under both the state and federal systems does not constitute a double jeopardy claim under the Fifth Amendment of the United States Constitution, citing the dual sovereignty doctrine and the right of each to pursue prosecution of its *Code* violations (*Heath v. Alabama*, 474 U.S. 82, 82-83 (1985)).

Allowing the state to prosecute acts already convicted in federal court may increase the number of convictions at the state level. However, it is impossible to estimate the number of potential convictions that could result from the passage of the amendment. Therefore, the impact of the proposed amendment cannot be determined.

No adjustment to the sentencing guidelines would be necessary under the proposal.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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