



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1239 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Norment)

Date Submitted: 2/21/03

LD #: 03-0388508

Topic: Capital cases; mental retardation

Proposed Change:

This proposal amends §§ 18.2-10, 19.2-175, 19.2-264.3:1 and 19.2-264.4 and adds §§ 8.01-654.2, 19.2-264.3:1.1, 19.2-264.3:1.2 and 19.2-264.3:3 to prohibit the death penalty for mentally retarded persons. The proposed legislation establishes a process for determining if an offender is mentally retarded. Current death row inmates could also seek a motion for post-conviction determination of mental retardation and a reduction of a death sentence to a sentence of life. This proposal includes an emergency clause which would set it in force from the date of its passage.

Currently, the *Code of Virginia* does not prohibit the death penalty for mentally retarded persons. Under § 18.2-10, Class 1 felons who are at least 16 years of age may be sentenced to either death or life imprisonment.

Current Practice:

Based on fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 32 offenders were convicted of a completed act of capital murder during that period. Of the 32 offenders convicted of a completed capital murder, 17 (53%) were sentenced to death.

According to the Department of Corrections (DOC), 15 offenders were received onto death row between January 1, 2000, and November 20, 2002. As of November 21, 2002, there were 22 inmates in Virginia's prison system serving under a death sentence. While IQ data is not available on the data file for all death row inmates, one inmate on death row is known to be "moderately retarded." DOC data indicate that inmates remain on death row for an average of 6.3 years prior to execution (based on the last 48 offenders who have been executed); however, 54% of these executions occurred within six years of the offender entering death row.

Virginia's sentencing guidelines do not cover capital murder offenses defined in § 18.2-31. Attempted capital offenses are covered by the guidelines when there is an accompanying conviction for a crime with a maximum penalty of life imprisonment; in those situations, the attempted capital murder is an additional offense that augments the guidelines recommendation.

Impact of Proposed Legislation:

The proposed legislation is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth during the next six years. Under *Atkins v. Virginia*, the Supreme

Court of the United States ruled that the execution of criminals who were mentally retarded is cruel and unusual punishment in violation of Federal Constitution's Eighth Amendment, thereby prohibiting such punishment. However, while the average time on death row prior to execution is currently 6.3 years, mentally retarded offenders, because of their limited capacity to make critical decisions, would not likely be permitted by the Courts to limit, or reduce, the appeals process. Consequently, mentally retarded persons on death row would likely be incarcerated for at least the average time prior to a potential execution date. Hence, it is estimated that the prohibition of the death penalty for mentally retarded persons would result in no additional state-responsible (prison) beds over the six-year window specified in § 30-19.1:4 for legislative impact statements.

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

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

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