



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 129

(Patron – Hargrove)

Date Submitted: 12/8/03

LD #: 04-7428320

Topic: Elimination of the death penalty

Proposed Change:

The proposal amends §§ 18.2-8, 18.2-10, 18.2-22, 18.2-25, and 19.2-152.2 to eliminate the punishment of death for Class 1 felonies and to remove references to the punishment of death from related statutes. Under the proposed change, an offender convicted of a Class 1 felony must be sentenced to imprisonment for life and would be ineligible for parole, good conduct allowance, earned sentence credits and conditional release under § 53.1-40.01. The provisions of the proposal would apply to Class 1 felonies committed on or after July 1, 2004.

Currently, under § 18.2-10, an offender convicted of a Class 1 felony who was at least 16 years of age at the time of the offense and is not mentally retarded may be sentenced to either death or life imprisonment. Conspiracy to commit an offense punishable by death is a Class 3 felony (§ 18.2-22), while an attempt to commit such an offense is a Class 2 felony (§ 18.2-25). Under current *Code*, § 19.2-152.2 excludes offenses punishable by death from pretrial services and community-based corrections programs, and § 53.1-40.01 excludes Class 1 felons from conditional release.

Data Analysis:

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), 21 offenders were received onto death row between January 1, 2000, and November 24, 2003. As of November 24, 2003, there were 27 inmates in Virginia's prison system serving under a death sentence. DOC data indicate that inmates remain on death row for an average of 6.3 years prior to execution (based on the last 52 offenders who have been executed); however, 56% 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 will increase the bed space needs of the Commonwealth by eliminating the death penalty. Because death row inmates serve an average of more than six years, much of the increased needs will occur beyond the six-year window specified in § 30-19.1:4 for legislative impact statements. However, abolishing the death penalty for offenses committed on or after July 1, 2004, would result in the estimated need for approximately three additional state-responsible (prison) beds over the next six years.

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

Estimated Ten Year Impact in State-Responsible Beds

FY05	FY06	FY07	FY08	FY09	FY10
0	0	0	1	1	2

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$54,573 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.

Assumptions underlying the analysis include:

1. New cases representing state-responsible sentences were based on the admissions forecasts approved by the Secretary of Public Safety's Committee on Inmate Forecasting in August 2003.
2. The impact of the proposed legislation, which would be effective on July 1, 2004, is phased in to account for case processing time.
3. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*

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