



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 47

(Patron – Marsh)

Date Submitted: 12/8/03

LD #: 04-0769756

Topic: Moratorium on prisoner executions

Proposed Change:

The proposal would establish a moratorium on prisoner executions. The suspension of executions would not affect other matters of law relating to the death penalty, including but not limited to the filing of capital charges, sentencing proceedings, appeals and habeas review.

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 found to be 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 state-responsible (prison) bed space needs of the Commonwealth by placing a moratorium on the execution of prisoners. While no execution dates have been formally scheduled, the Attorney General's office estimates that as many as 5 death row inmates could be executed over the next 12 months, while a total of 10 could reach execution over the next 24 months. Although the proposal does not affect the prosecution of capital cases or the imposition of the death sentence, the moratorium would also forestall the execution of inmates entering death row in the future. Therefore, it is estimated that a moratorium on executions (should it remain in place) would result in the need for up to 25 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
11	13	15	18	22	25

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$564,020 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 applied to those currently sentenced to death, as well as future prosecutions.
3. The moratorium will be in effect for the duration of the six-year period under consideration for bed space impact analysis.
4. 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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The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.