



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1177

(Patron – Obenshain)

Date Submitted: 1/10/2005

LD #: 05-3828104

Topic: Elimination of the “triggerman rule” and sentencing in capital cases

Proposed Change:

The proposal amends § 18.2-18 to change how offenders convicted as principals in the second degree or accessories before the fact are punished in most capital cases.

Currently, § 18.2-18 specifies that principals in the second degree and accessories before the fact may be indicted, tried, convicted and punished in all respects as a principal in the first degree. This provision provides an exception for certain types of capital murder cases. An offender convicted as a principal in the second degree or an accessory before the fact to capital murder (not including killing for hire, killing at the direction of someone in a criminal drug enterprise, or killing at the direction of someone engaged in a terrorist act) is to be indicted, tried, convicted and punished for first-degree murder.

The proposal returns § 18.2-18 to the language in place prior to the 1977 Acts of the General Assembly (Chapter 478) and would allow all persons convicted as a principal in the second degree or an accessory before the fact to a capital murder to be sentenced to life or death.

In addition, the proposal amends § 19.2-264.4 to revise the process of jury sentencing in capital cases. Under the proposal, if the jury cannot agree as to the penalty in a capital case, the court must empanel a different jury to ascertain punishment, unless the defendant, the Commonwealth’s attorney and the court agree that the court shall affix punishment. Currently, this statute specifies that the court must impose a sentence of life in a capital case when the jury cannot agree on sentencing.

The proposal also amends § 19.2-266.2, related to defense objections that must be raised before trial, and § 19.2-398, related to appeals by the Commonwealth.

Analysis:

Data available to the Commission do not contain sufficient detail to identify the number of offenders convicted as a principal in the second degree or an accessory before the fact in a capital case.

Data are not available regarding cases in which life is imposed in a capital case because the jury cannot agree on sentencing.

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.

Impact of Proposed Legislation:

The proposed legislation is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified in § 30-19.1:4 for legislative impact statements. By eliminating the current exception for the punishment of principals in the second degree and accessories before the fact in certain capital cases, the proposal could increase the number of offenders receiving a life sentence and could result in additional offenders receiving the death penalty. Databases available to the Commission are insufficient to provide information on the number cases that may be affected by the proposal. However, offenders who may be affected by this proposal can be convicted currently of a Class 2 felony; nearly all offenders convicted of a Class 2 felony receive sentences in excess of six years. Therefore, the potential impact associated with longer prison sentences for these offenders would likely occur beyond the six-year forecast window required by § 30-19.1:4. Moreover, the potential impact, if any, associated with increased death penalty cases would lead to a reduction in state-responsible (prison) bed space needs if offenders affected by the proposal were executed during the six-year forecast window. The other aspect of the proposal, which replaces an automatic life sentence when a jury cannot agree on sentencing in a capital case with a second jury to consider punishment (or with sentencing by the court, if the parties agree) may also result in additional offenders given the death penalty.

Department of Corrections (DOC) data indicate that although inmates remain on death row for an average of 6.1 years prior to execution (based on the last 56 offenders who have been executed), 57% of recent executions occurred within six years of the offender entering death row. For these reasons, no increase in state-responsible (prison) beds is expected over the next six years.

No adjustment to Virginia's sentencing 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.

trigger04_3828