



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 859

(Patron – Hargrove)

LD #: 06-6590320

Date: 01/06/06

Topic: Punishment for Class 1 felony defined as life

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$60,807 (3 beds)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends §§ 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, 2006.

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.

The proposal repeals §§ 17.1-313, 17.1-406 and 18.2-17 of the *Code of Virginia*. The first two sections deal with review of death sentences; § 17.1-313 requires that the Supreme Court of Virginia review each death penalty case and § 17.1-406 states that the Virginia Court of Appeals does not have jurisdiction in death penalty cases. § 18.2-17 defines that capital punishment can only be imposed if defined by statute.

Analysis:

According to the Department of Corrections (DOC), eight offenders were received onto death row between January 1, 2003, and October 3, 2005. As of October 3, 2005, there were 25 inmates¹ in Virginia's prison system serving under a death sentence. DOC data indicate that inmates remain on death row for an average of 6.1 years prior to execution (based on the last 57 offenders who have been

¹ The sentence of one inmate was commuted to life imprisonment on November 28, 2005.

executed); however, the length of time spent on death row has been declining in recent years. For the last 20 inmates who have been executed since January 1, 2000, the average stay on death row was just over 5 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation will increase the bed space needs of the Commonwealth by eliminating the death penalty for crimes committed on or after July 1, 2006. Because death row inmates serve an average of more than five years before their execution, much of the increased needs will occur beyond the six-year window specified in § 30-19.1:4 for legislative impact statements. However, it is estimated that the proposal would result in the need for approximately three additional state-responsible (prison) beds over the next six years.

Estimated Ten Year Impact in State-Responsible (Prison) Beds

FY06	FY07	FY08	FY09	FY10	FY11
0	0	0	0	1	3

Local adult correctional facilities. Class 1 felony inmates will not affect local-responsible (jail) bed space needs.

Adult community corrections programs. Class 1 felony inmates will not affect adult community corrections programs

Virginia's sentencing guidelines. 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.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal will not increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$60,807 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 2005.
2. The impact of the proposed legislation, which would be effective on July 1, 2006, is applied to those currently sentenced to death, as well as future prosecutions.
3. Cost per prison bed was assumed to be \$23,966 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.*