



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 362

(Patron – Ticer)

LD #: 06-1241134

Date: 12/20/2005

Topic: Punishment for conviction of a Class 1 felony

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **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:

This proposal amends § 18.2-10 to limit the death penalty to persons who were 18 years of age or older at the time of the offense.

Currently the *Code of Virginia* allows the death penalty to be applied to persons who were age 16 or older at the time the offense was committed, if the person is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1. In cases of Class 1 felonies, if the convicted person was under age 16 at the time of the offense, the punishment is life imprisonment.

Analysis:

In *Roper v. Simmons*, the U.S. Supreme Court recently held “(t)hat execution of individuals who were under 18 years of age at time of their capital crimes is prohibited by the Eighth and Fourteenth Amendments” (125 S. Ct. 1183 (2005), p. 1183).

According to the Virginia Department of Corrections (DOC), of the 66 persons executed in the past ten years, three were aged 17 at the time of their offense. These offenders served 4.7, 6.4, and 8.1 years on death row, respectively, before being executed.

One of the 24 inmates currently awaiting execution was under the age of 18 when the crime was committed. That offender, however, was received onto death row in November 2002, at the age of 24.

Capital murder convictions are not covered by the guidelines as the primary, or most serious, offense at conviction.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal would bring the *Code* into concurrence with *Roper v. Simmons*, a recent ruling by the U.S. Supreme Court that prohibits the execution of individuals under the age of 18. Even in the absence of *Roper v. Simmons*, the impact of the proposed legislation is expected to be negligible during the next six years (the window used for calculating the fiscal impact statements under § 30-19.1:4). In the last decade, only one offender who was under the age 18 at the time of the offense was executed having served less than six years. That person spent 4.7 years on death row before execution, suggesting that the impact, if any, would likely begin late in the six-year projection window. The proposed change in punishment would become effective for offenses committed on or after July 1, 2005, but due to case processing time (the time from the offense being committed to sentencing) any impact would take nearly two years to be fully realized. Moreover, for offenders under the age of 18, part of the time would be served on death row under current law could be served, under the proposal, in a Department of Juvenile Justice facility (see below). For these reasons, the number of prison beds required by the proposal is not expected to increase over the next six years.

Local adult correctional facilities. Capital murder felons are typically sentenced to await execution in a DOC facility; the proposal has no impact on local-responsible (jail) bed space needs.

Adult community corrections programs. Capital murder felons are not released; the proposal has no impact on community corrections programs.

Virginia's sentencing guidelines. Capital murder felons are not sentencing guideline offenses; no adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. Given *Roper v. Simmons*, the Department of Juvenile Justice (DJJ) reports that the proposal will not impact Juvenile Correctional Center (JCC) bed space needs. Any offender affected by the proposal may be ordered by the court, under paragraph A1 of § 16.1-272, to serve a portion of their sentence (up to age 21) in a JCC; any person, aged 16 to less than 18, sentenced to be executed would not have been placed in a JCC.

Juvenile detention facilities. Capital felons are not placed in juvenile detention facilities; DJJ reports that the proposal has no impact on the bed space needs of juvenile detention facilities.

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