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SENATE BILL NO. 1116

Offered January 10, 2007

Prefiled January 9, 2007

A *BILL to amend and reenact §§ 18.2-18 and 18.2-31 of the Code of Virginia, relating to capital murder of a justice or judge or subpoenaed witness in a criminal case; triggerman rule in certain capital murders; penalty.*

Patrons—Rerras and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-18 and 18.2-31 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-18. How principals in second degree and accessories before the fact punished.

A. In the case of every felony *except a violation of § 18.2-31*, every principal in the second degree and every accessory before the fact may be indicted, tried, convicted and punished in all respects as if a principal in the first degree; ~~provided, however, that except in the case of a killing for hire under the provisions of subdivision 2 of § 18.2-31 or a killing pursuant to the direction or order of one who is engaged in a continuing criminal enterprise under the provisions of subdivision 10 of § 18.2-31 or a killing pursuant to the direction or order of one who is engaged in the commission of or attempted commission of an act of terrorism under the provisions of subdivision 13 of § 18.2-31, an accessory before the fact or principal in the second degree to a capital murder shall be indicted, tried, convicted and punished as though the offense were murder in the first degree.~~

B. *In the case of a capital murder for hire under the provisions of subdivision 2 of § 18.2-31, a capital murder involving a continuing criminal enterprise under subdivision 10 of § 18.2-31, or a capital murder involving an act of terrorism under subdivision 13 of § 18.2-31, a principal in the second degree may be indicted, tried, convicted, and punished in all respects as if a principal in the first degree. In all other offenses of capital murder, a principal in the second degree may be indicted, tried, convicted, and punished as a principal in the first degree only if he had the same intent to kill as the principal in the first degree; otherwise, he shall be indicted, tried, convicted and punished as though the offense were murder in the first degree.*

C. *In the case of a capital murder for hire under the provisions of subdivision 2 of § 18.2-31, a capital murder involving a continuing criminal enterprise under subdivision 10 of § 18.2-31, or a capital murder involving an act of terrorism under subdivision 13 of § 18.2-31, an accessory before the fact may be indicted, tried, convicted and punished in all respects as if a principal in the first degree. In all other offenses of capital murder, an accessory before the fact may be indicted, tried, convicted and punished as a principal in the first degree only if he ordered or directed the willful, deliberate, and premeditated killing; otherwise, he shall be indicted, tried, convicted and punished as though the offense were murder in the first degree.*

§ 18.2-31. Capital murder defined; punishment.

The following offenses shall constitute capital murder, punishable as a Class 1 felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration;

6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in § 9.1-101 or any law-enforcement officer of another state or the United States having the power to arrest for a felony under the laws of such state or the United States, when such killing is for the purpose of interfering with the performance of his official duties;

7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction;

8. The willful, deliberate, and premeditated killing of more than one person within a three-year period;

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59 9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted
60 commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such
61 killing is for the purpose of furthering the commission or attempted commission of such violation;

62 10. The willful, deliberate, and premeditated killing of any person by another pursuant to the
63 direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection I
64 of § 18.2-248;

65 11. The willful, deliberate and premeditated killing of a pregnant woman by one who knows that the
66 woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy
67 without a live birth;

68 12. The willful, deliberate and premeditated killing of a person under the age of fourteen by a person
69 age twenty-one or older; ~~and~~

70 13. The willful, deliberate and premeditated killing of any person by another in the commission of or
71 attempted commission of an act of terrorism as defined in § 18.2-46.4;

72 14. *The willful, deliberate and premeditated killing of a justice of the Supreme Court, a judge of the*
73 *Court of Appeals, a judge of a circuit court or district court, a judge designated under § 17.1-105, a*
74 *judge under temporary recall under § 17.1-106, or a substitute judge appointed under § 16.1-69.9:1*
75 *when the killing is for the purpose of interfering with his official duties as a judge; and*

76 15. *The willful, deliberate and premeditated killing of any witness under subpoena in a criminal case*
77 *when the killing is for the purpose of interfering with the person's duties in such case.*

78 If any one or more subsections, sentences, or parts of this section shall be judged unconstitutional or
79 invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof but shall
80 be confined in its operation to the specific provisions so held unconstitutional or invalid.

81 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
82 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0**
83 **for periods of imprisonment in state adult correctional facilities and is \$0 for periods of**
84 **commitment to the custody of the Department of Juvenile Justice.**