



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

House Bill No. 2347

Enrolled

(Patron Prior to Enrollment – Gilbert, et al.)

LD #: Enrolled

Date: 2/28/2007

Topic: Capital murder of a witness

#### 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:

The proposal expands the crimes defined as capital murder to include the willful, deliberate and premeditated killing of any witness under subpoena, if the murder is committed for the purpose of interfering with the person's duties in the case.

Currently, under § 18.2-10, an offender convicted of a Class 1 felony who was at least 18 years of age<sup>1</sup> 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).

#### Analysis:

According to the Department of Corrections (DOC), there were 19 Virginia inmates<sup>2</sup> serving under a death sentence as of November 30, 2006. Since January 1, 2004, five offenders have been received onto death row. DOC data indicate that inmates remain on death row for an average of 6.2 years prior to execution (based on the last 61 offenders who have been 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, the average stay on death row was just over 5 years.

#### Impact of Proposed Legislation:

**State adult correctional facilities.** The proposed legislation is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements. Offenders who may be affected by this proposal can be

<sup>1</sup> In *Roper v. Simmons*, the U.S. Supreme Court recently held “(t)hat execution of individuals who were under 18 years of age at the time of their capital crimes is prohibited by the Eighth and Fourteenth Amendments” (125 S. Ct. 1183 (2005), p. 1183).

<sup>2</sup> The sentence of one inmate was commuted to life imprisonment on November 28, 2005.

convicted currently of first-degree murder, a Class 2 felony (carrying a maximum penalty of life in prison). Nearly all offenders convicted of first-degree murder receive sentences in excess of six years. Therefore, any potential impact associated with additional offenders with life sentences would occur beyond the six-year forecast window required by § 30-19.1:4. The potential impact, if any, associated with increased death penalty cases would lead to a reduction in state-responsible (prison) bed space needs, as some offenders given the death penalty are executed within six years of their sentence.

**Local adult correctional facilities.** The proposal will not affect local-responsible (jail) bed space needs.

**Adult community corrections programs.** The proposal 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.

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**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.**

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