



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1116 (Patron – Rerras and Stolle)

LD #: **07-7019134**

Date: 1/9/2007

Topic: Capital murder of a judge or witness and the “triggerman rule”

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 amends § 18.2-18 to change how offenders convicted as principals in the second degree and accessories before the fact are punished in 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 instead of capital murder.

The proposal expands the circumstances in which principals in the second degree and accessories before the fact to capital murder can be convicted and punished in the same manner as principals in the first degree (and subjected to the penalties of death or life imprisonment). Under the proposal, a principal in the second degree to a capital murder can be punished as a principal in the first degree if he had the same intent to kill as the principal in the first degree; an accessory before the fact can be punished as a principal in the first degree if he ordered or directed the killing.

In addition, the proposal expands the crimes defined as capital murder to include the willful, deliberate and premeditated killing of a justice, judge, or witness under subpoena (if the murder is committed for the purpose of interfering with the person’s official duties or other duties related to a case).

Currently, under § 18.2-10, an offender convicted of capital murder who was at least 18 years of age¹ 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).

¹ 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).

Analysis:

According to the Department of Corrections (DOC), there were 19 Virginia inmates² 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.

Data available to the Commission do not contain sufficient detail to identify the number of offenders convicted of first-degree murder who had acted as an accessory before the fact to a capital offense.

Impact of Proposed Legislation:

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. By expanding capital murder provisions and redefining the “triggerman rule,” the proposal could increase the number of offenders receiving a life sentence as well as the number of offenders receiving the death penalty. However, offenders who may be affected by this proposal can be convicted currently of a Class 2 felony (carrying a maximum penalty of life in prison). Nearly all offenders convicted of a Class 2 felony receive sentences in excess of six years. Therefore, any potential impact associated with additional offenders with life sentences would likely 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, if offenders affected by the proposal were executed during the six-year forecast window.

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

Adult community corrections programs. The proposal is not expected to have an impact on adult community corrections programs.

Virginia’s sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

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. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

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