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SENATE BILL NO. 802

Offered January 8, 2020

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A BILL to establish a moratorium on prisoner executions.

Patrons—Morrissey, Boysko and Howell; Delegates: Hope, Rasoul and Samirah

Referred to Committee on the Judiciary

Whereas, imposition of the death penalty is the ultimate punishment that the Commonwealth can impose on a person and cannot be undone in the event of wrongful conviction; and

Whereas, since the reinstatement of the death penalty following *Furman v. Georgia*, 408 U.S. 238 (1972), the Commonwealth has carried out a consistently high number of executions in comparison with most other states that allow the death penalty; and

Whereas, the imposition of the death penalty carried out by order of the Commonwealth on an innocent person would be an unspeakable and most lamentable injustice; and

Whereas, numerous innocent persons have been executed in the United States and the Commonwealth's use of the death penalty nearly resulted in the wrongful execution of Earl Washington in 1985; and

Whereas, on the basis of post-conviction DNA testing not available at the time of his trial, Earl J. Washington, Jr., who was convicted of capital murder and twice scheduled to be executed for the 1982 rape and murder of a Culpeper woman, was found to be innocent and granted an absolute pardon for capital murder; and

Whereas, questions have arisen about disparity, fairness, equity, and due process requirements regarding the imposition of the death penalty, the competence of counsel for capital defendants, and limitations on the introduction of newly discovered and possibly exculpatory evidence; and

Whereas, it is impossible to meet the constitutional mandate to provide an accused person with a trial before a jury of his peers when over 60 percent of the public is opposed to capital punishment and is therefore automatically excluded from jury service by rule of law; and

Whereas, questions still remain regarding whether the death penalty is being imposed unfairly on those who are indigent; and

Whereas, individuals who are sentenced to death are frequently of diminished intelligence, suffer from traumatic brain injuries or severe mental illness, or cannot afford to retain private counsel or expert witnesses to establish their innocence or mitigate their punishment; and

Whereas, the United States of America is an outlier among Western industrialized nations regarding the number of executions conducted and is outnumbered only by North Korea, China, Iran, Saudi Arabia, Vietnam, Iraq, and Egypt; and

Whereas, the general public strongly disfavors capital punishment and capital punishment has been abolished or prevented by moratorium in 106 of 193 United Nations member states and in 21 states within the United States; and

Whereas, costs are higher at every level of a death penalty case, which requires more pretrial time and preparation, more pretrial motions, more experts, the involvement of more attorneys, lengthier and more complex jury selection, longer trials, and more post-conviction reviews, than the costs of similar cases for which life imprisonment is the maximum penalty; and

Whereas, approved lethal injection drugs have become virtually impossible to obtain without resorting to secret procurement from unknown compounding pharmacies using chemicals that manufacturers prohibit for use in capital punishment; and

Whereas, states have encountered problems in the administration of lethal injection drugs, raising questions of whether executions can be carried out without violating the cruel and unusual punishment prohibitions of the Eighth Amendment to the United States Constitution; and

Whereas, on the basis of these and other issues, there exists substantial public support for a moratorium on the death penalty in the Commonwealth; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. Notwithstanding any other provisions of law, the Commonwealth shall not conduct any executions of prisoners sentenced to death. This act is a suspension of executions only; all other matters of law related to the death penalty, including bringing and trying capital charges, sentencing proceedings, imposing the death penalty, appeals, and habeas review, are not affected by this act.

2. That the provisions of this act shall expire upon adjournment sine die of a regular session of the General Assembly that commences after a joint subcommittee of the General Assembly established

INTRODUCED

SB802

59 pursuant to a joint resolution passed during the 2020 Session of the General Assembly has
60 conducted a comprehensive study of the death penalty in the Commonwealth and published its
61 conclusions and recommendations in a report.