



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1755

(Patron – Hargrove)

LD #: 09-8210532

Date: 12/17/2008

Topic: Punishment for Class 1 felony offenses

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$70,220 (3 beds)
- **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 numerous statutes in the *Code of Virginia* to eliminate the punishment of death for Class 1 felonies and to remove references to the punishment of death from related statutes. Under the proposed change, an offender convicted of a Class 1 felony must be sentenced to imprisonment for life and would be ineligible for parole, good conduct allowance, earned sentence credits and conditional release under § 53.1-40.01. The provisions of the proposal would apply to Class 1 felonies committed on or after July 1, 2008.

Currently, under § 18.2-10, an offender convicted of a Class 1 felony who was at least 18 years of age¹ at the time of the offense and is determined not 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 16 Virginia inmates serving under a death sentence as of December 16, 2008. Since January 1, 2006, five offenders have been received onto death row.

DOC data indicate that inmates remain on death row for an average of 6.3 years prior to execution (based on the last 65 inmates executed). However, the length of time spent on death row has decreased in recent years. For the last 20 inmates executed, the average stay on death row was 5.6 years.

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).

Impact of Proposed Legislation:

State adult correctional facilities. By eliminating the death penalty for capital crimes committed on or after July 1, 2008, the proposed legislation will increase the bed space needs of the Commonwealth. Because death row inmates serve an average of more than five years before their execution, much of the increased needs will occur beyond the six-year window specified in § 30-19.1:4 for legislative impact statements. However, it is estimated that the proposal would result in the need for approximately three additional state-responsible (prison) beds by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$70,220 .

Estimated Ten Year Impact in State-Responsible (Prison) Beds

FY10	FY11	FY12	FY13	FY14	FY15
0	0	0	1	1	3

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. 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. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$70,220 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.

Assumptions underlying the analysis include:

1. New cases representing state-responsible sentences were based on the admissions forecasts approved by the Secretary of Public Safety's Committee on Inmate Forecasting in August 2007.
2. The impact of the proposed legislation, which would be effective on July 1, 2008, is applied only to future prosecutions. The number of offenders affected by the proposal is estimated based on the average number of offenders receiving the death penalty each year.
3. The bed space impact was derived based on the length of time served on death row by inmates prior to execution (for the last 60 inmates who have been executed in Virginia).
4. Cost per prison bed was assumed to be \$27,294 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*

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