



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2358

(Patron – Gilbert)

LD #: 09-0535516

Date: 12/15/2008

Topic: Redefining 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 or 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 (excluding 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 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.

Analysis:

According to FY2006-FY2007 Pre/Post-Sentence Investigation (PSI) data, 35 offenders were convicted of a completed act of capital murder. Two of these offenders were recorded as having been an accessory before the fact. The data do not contain sufficient detail to identify offenders convicted as a principal in the second degree 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 the circumstances in which accessories before the fact can be punished as principals in the first degree in capital cases, 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 receiving 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.

trigger02_0535