Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2638
(Patron – Pogge)

LD#: 09-0853686 **Date:** 1/23/2009

Topic: Capital murder of auxiliary law enforcement officers and fire marshals

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** None ($0)
- **Local Adult Correctional Facilities:** None ($0)
- **Adult Community Corrections Programs:** None ($0)
- **Juvenile Correctional Centers:** Cannot be determined
- **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 an auxiliary police officer (as defined in §§ 15.2-1731 and 15.2-1733), an auxiliary deputy sheriff (as defined in § 15.2-1603), a fire marshal (appointed pursuant to § 27-30) or an assistant fire marshal (appointed pursuant to § 27-36), when the killing is for the purpose of interfering with the victim's official duties.

Currently, under § 18.2-10, an offender convicted of a Class 1 felony who was at least 18 years of age[1] at the time of the offense and is not found to be mentally retarded may be sentenced to either life imprisonment or death. 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.

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

[1] In *Roper v. Simmons*, the U.S. Supreme Court 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).

§ 30-19.1:4 for legislative impact statements. Offenders who may be affected by this proposal can currently be convicted 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 being given 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 may lead to a reduction in prison beds needed, 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 may increase juvenile correctional center bed space needs because the circuit court may sentence a juvenile convicted of capital murder to serve a portion of the life sentence as a serious juvenile offender under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults. Although DJJ expects this option to be rarely used, the exact number cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice 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 $0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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