



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1200

(Patron – Obenshain)

LD #: 11103668

Date: 1/10/2011

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:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### 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. Excluding acts associated with a 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, an individual acting as a principal in the second degree or an accessory before the fact to capital murder is instead indicted, tried, convicted and punished for first-degree 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). The proposal expands the provision in the following ways:

- In cases of murder associated with rape, forcible sodomy, or object penetration (in violation of subdivision 5 of § 18.2-31), a *principal in the second degree* could be punished as a principal in the first degree only if he had the same intent to kill as the principal in the first degree.
- In cases of murder associated with rape, forcible sodomy, or object penetration (in violation of subdivision 5 of § 18.2-31), an *accessory before the fact* could be punished as a principal in the first degree if he ordered or directed the killing.

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**Analysis:**

According to fiscal year (FY) 2009 and FY2010 data from the Circuit Court Automated Information System (CAIS), 27 offenders were convicted of a completed act of capital murder. Three 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.

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**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 principals in the second degree and 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 will not affect adult community corrections resources.

**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 impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

**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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