



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1133

(Patron – Hope)

LD #: 14103371 Revised

Date: 1/13/2014

Topic: Punishment for Class 1 felony offenses

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

Currently, under § 18.2-10, an offender convicted of a Class 1 felony who was at least 18 years of age at the time of the offense and is determined not to be mentally retarded may be sentenced to either death or life imprisonment. For individuals who were under the age of 18 at the time of the offense or who are mentally retarded, the penalty is life imprisonment. The proposed modifications to § 18.2-10 would make offenders who are determined to be mentally disabled or mentally impaired ineligible for the death penalty. These offenders would be subject to a sentence of imprisonment for life. The proposal also makes technical and procedural amendments relating to this change.

Pursuant to § 19.2-264.3:1.1, “mentally retarded” is defined as a disability, originating before the age of 18 years, characterized by significantly subaverage intellectual functioning and significant limitations in adaptive behavior. The proposed definition of “mentally disabled” mirrors the definition of mentally retarded, with the exception that the disability may develop at any age. Under the proposal, the term “mentally impaired” would mean a substantial disorder of a person’s cognitive, volitional, or emotional processes characterized concurrently by an impairment in the capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.

Analysis:

According to the Department of Corrections (DOC), there were eight inmates serving under a death sentence as of December 4, 2013. Since January 1, 2008, three offenders have been received onto death row. DOC data indicate that inmates remain on death row for an average of 5.8 years prior to execution (based on the 37 inmates executed in Virginia since January 1, 2000). Existing data do not contain sufficient detail to identify cases that would be affected by the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. By removing the applicability of the death penalty in cases where the offender is determined to be mentally disabled or mentally impaired, the proposed legislation may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of individuals who would be sentenced to a term of life imprisonment instead of death if the proposal is enacted. Therefore, the impact on prison bed space needs cannot be determined.

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 completed acts of capital murder. 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

deathpenalty03_3371