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SENATE JOINT RESOLUTION NO. 57

Offered January 13, 2016

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Establishing a joint subcommittee to study the death penalty in Virginia. Report.

Patrons—Dance and McEachin

Referred to Committee on Rules

WHEREAS, according to Virginians for Alternatives to the Death Penalty, "Virginia has a long and dark history with the death penalty from the first execution in the New World in 1608, when Captain George Kendall was executed in Jamestown for spying and Virginia has executed more than 1,300 people, the most of any other state and has also executed more women and the youngest children of any state"; and

WHEREAS, the Commonwealth has executed more people per capita than any other state with populations greater than one million and is second only to the state of Texas in the total number of executions carried out since reinstatement of the death penalty in 1976; and

WHEREAS, since the 1970s, 155 persons convicted and sentenced to death in the United States have been released from death row due to evidence of their innocence after spending an average of 10 years on death row; and

WHEREAS, many of these persons were victims of a faulty justice system and would have been executed before evidence of their innocence could be proven if they had been convicted in Virginia; and

WHEREAS, imposition of the death penalty is the ultimate punishment that the Commonwealth can impose on a person, and the imposition of the death penalty carried out by order of the Commonwealth on an innocent person would be an unspeakable and most lamentable injustice; and

WHEREAS, death penalty critics warn that with a high execution rate and changes in the law of appeals to the federal courts, it is only a matter of time before an innocent person is put to death, if it has not already happened; and

WHEREAS, it is important to determine if the checks and balances within the criminal justice system, namely the right to appeal, have been so expedited as to render the system unjust; and

WHEREAS, questions have arisen about disparity, arbitrariness, fairness, equity and due process requirements regarding the imposition of the death penalty, the competence of counsel for capital defendants, and limitations on the introduction of newly discovered and possibly exculpatory evidence; and

WHEREAS, questions still remain about the fairness of the system notwithstanding recent actions by the General Assembly; for example, the "21-Day Rule" has been modified in a limited manner only; and

WHEREAS, according to researchers, the cost of the death penalty amounts to a net expense to the state and the taxpayers and is more expensive than a system handling similar cases with a lesser punishment; and

WHEREAS, the main reason for this are higher costs at every level of the death penalty case, including more pre-trial time and preparation, more pre-trial motions, more experts, twice as many attorneys involved, more difficulty seating a jury, and longer trials; and

WHEREAS, the higher costs also appear in the post-conviction stage: additional appeals following conviction and incarceration of inmates in more secure facilities with a need for more experienced staff; and

WHEREAS, the Judicial Conference of the United States found defense costs were four times higher in death penalty cases than in comparable non-capital cases, and that prosecution costs in death cases were 67 percent higher than defense costs, even without investigative costs of law-enforcement agencies; and

WHEREAS, few states have actually studied the costs of the death penalty process from commencement of charges through incarceration; and

WHEREAS, due to these questions and others, there may be public support for a moratorium on the death penalty in the Commonwealth; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study the death penalty in Virginia. The joint subcommittee shall consist of seven legislative members. Members shall be appointed as follows: three members of the Senate to be appointed by the Senate Committee on Rules and four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. The joint subcommittee shall elect a

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59 chairman and vice-chairman from among its membership.

60 In conducting its study, the joint subcommittee shall (i) provide a demographic analysis of capital
61 defendants; (ii) examine, among other issues it deems appropriate, issues concerning the death penalty,
62 including disparity, fairness, equity, due process, competence of counsel for capital defendants,
63 particularly those who are indigent, and limitations on the introduction of newly discovered and possibly
64 exculpatory evidence; (iii) review the administration of criminal justice in Virginia to determine the
65 extent to which the process has failed, resulting in wrongful convictions and possible executions of
66 innocent persons; (iv) determine the number of executions of individuals who were juveniles at the time
67 of their offense; (v) determine the prosecution and state-paid defense costs in all capital cases, including
68 pretrial, trial, direct appeal, and post-conviction proceedings and state and federal habeas corpus; (vi)
69 examine all additional court costs, including extra or lengthier trials, jury selection, compensation of
70 additional jurors, and added security; (vii) identify all costs associated with maintaining the Regional
71 Virginia Capital Defender offices, and all costs incurred by the Department of Corrections in
72 maintaining separate death row and execution facilities, including the costs of recruiting, training, and
73 maintaining personnel qualified to serve in such facilities and to carry out the housing and execution of
74 prisoners under a sentence of death; and (viii) submit such recommendations as the joint subcommittee
75 may deem appropriate.

76 Administrative staff support shall be provided by the Office of the Clerk of the Senate. Legal,
77 research, policy analysis, and other services shall be provided by the Division of Legislative Services.
78 Technical assistance shall be provided to the joint subcommittee by the Virginia Sentencing
79 Commission, the Department of Corrections, and the Joint Legislative Audit and Review Commission.
80 All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

81 The joint subcommittee shall be limited to four meetings for the 2016 interim, and the direct costs of
82 this study shall not exceed \$13,160 without approval as set out in this resolution. Approval for
83 unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the
84 joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is
85 agreed to, written authorization of both Clerks shall be required.

86 No recommendation of the joint subcommittee shall be adopted if a majority of the Senate members
87 or a majority of the House members appointed to the joint subcommittee (i) vote against the
88 recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the
89 joint subcommittee.

90 The joint subcommittee shall complete its meetings by November 30, 2016, and the chairman shall
91 submit to the Division of Legislative Automated Systems an executive summary of the joint
92 subcommittee's findings and recommendations no later than the first day of the 2017 Regular Session of
93 the General Assembly. The executive summary shall state whether the joint subcommittee intends to
94 submit to the General Assembly and the Governor a report of its findings and recommendations for
95 publication as a House or Senate document. The executive summary and report shall be submitted as
96 provided in the procedures of the Division of Legislative Automated Systems for the processing of
97 legislative documents and reports and shall be posted on the General Assembly's website.

98 Implementation of this resolution is subject to subsequent approval and certification by the Joint
99 Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or
100 delay the period for the conduct of the study, or authorize additional meetings during the 2016 interim.