

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

Death Penalty for Juvenile Offenders

**A Bill Referral Study to the House and
Senate Courts Committees and the
General Assembly of Virginia**



REPORT DOCUMENT NO. 89

**COMMONWEALTH OF VIRGINIA
RICHMOND
2006**



COMMONWEALTH of VIRGINIA

Virginia State Crime Commission

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December 31, 2005

TO: The Honorable Mark Warner, Governor of Virginia

And

Members of the Virginia General Assembly

Section 30-158(3) provides the Commission the power to “conduct studies and gather information and data in order to accomplish its purpose set forth in § 30-156...and formulate its recommendations to the Governor and the General Assembly.”

Enclosed for your review and consideration is the study report on the U.S. Supreme Court ruling that concluded imposing the death penalty on juveniles as cruel and unusual punishment. The Commission received assistance from all affected agencies and gratefully acknowledges their input.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K. Stolle".

Kenneth W. Stolle
Chairman

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION

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Thomas K. Norment, Jr.

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I. Authority for Study

The *Code of Virginia*, § 30-156, authorizes the Virginia State Crime Commission (“Crime Commission”) to study, report and make recommendations “on all areas of public safety and protection.” Additionally, the Crime Commission is to study “compensation of persons in law enforcement and related fields” and to study “apprehension, trial and punishment of criminal offenders.”¹ Section 30-158(3) empowers the Crime Commission to “conduct studies and gather information and data in order to accomplish its purposes as set forth in §30-156. . .and formulate its recommendations to the Governor and the General Assembly.”

Using the statutory authority granted to the Crime Commission, staff examined the constitutionality of executing a defendant who committed his crime when he was a juvenile.

II. Executive Summary

During the 2005 Session of the General Assembly, Senator Patricia Ticer introduced Senate Bill 1078 (SB 1078)² and Delegate Vincent Callahan introduced House Bill 1975 (HB1975),³ both of which would have eliminated the death penalty for defendants who committed their crimes as juveniles.⁴ Senate Bill 1078 was referred to the Senate Courts of Justice Committee, and House Bill 1975 was referred to the House Courts of Justice Committee; both Committees sent a letter to the Crime Commission asking for an analysis of the proposed legislation.

On March 1, 2005, the United States Supreme Court issued its opinion in Roper v. Simmons, 543 U.S. _____, 125 S. Ct. 1183 (2005). The Court held that it is a violation of the Eighth Amendment’s prohibition of cruel and unusual punishments to impose the death penalty on a person who committed his crime when he was less than 18 years of age.

Recommendation

Because the United States Supreme Court has reversed its earlier opinions on this subject, and has declared the imposition of the death penalty on a person who committed his crime while a juvenile to be unconstitutional, it is the recommendation of the Crime Commission that Virginia law on capital murder be changed to comport with constitutional requirements.

¹ VA. CODE ANN. § 30-156 (Michie 2004).

² Senate Bill 1078, 2005 General Assembly, Reg. Sess., (Va. 2005). See attachment A.

³ House Bill 1975, 2005 General Assembly, Reg. Sess., (Va. 2005). See attachment B.

⁴ The two bills were identical in wording.

III. Methodology

Staff reviewed the Roper v. Simmons decision that was issued by the United States Supreme Court. The *Code of Virginia* was then reviewed to establish what statutory changes would be needed for Virginia's death penalty statutes to comport with the Supreme Court's ruling.

IV. Background

Prior to Thompson v. Oklahoma, 487 U.S. 815 (1988), the issue of whether the Constitution of the United States could be held to prohibit the execution of juveniles had never been specifically addressed.⁵ In Thompson, the Supreme Court held that it was a violation of the Eighth Amendment to execute a juvenile who committed a capital offense when he was younger than 16 years of age. Four members of the Court's plurality in this case held that this mandate of the Eighth Amendment was due to "evolving standards of decency," and that "it would offend civilized standards of decency to execute a person who was less than 16 years old at the time of his or her offense."⁶

The next year, the Supreme Court held it was not a violation of the Eighth Amendment's prohibition on cruel and unusual punishments to execute a person who was 16 or 17 years of age at the time of his offense.⁷ The Court considered and rejected the argument that "evolving standards of decency" now prohibited the execution of juveniles, finding the evidence presented on behalf of the defendant to be unpersuasive.

In 2000, the Virginia General Assembly modified *Code of Virginia* § 18.2-10 to reflect the Constitutional prohibition on executing juveniles given by the Thompson decision.⁸ After the modification, the statute read, in relevant part, "The authorized punishments for conviction of a felony are: (a) For Class 1 felonies, death, if the person so convicted was 16 years of age or older at the time of the offense, or imprisonment for life...."⁹

The constitutional limitations on the execution of juvenile offenders established by the cases of Thompson v. Oklahoma and Stanford v. Kentucky were modified in 2005. In that year, the United States Supreme Court revisited the issue of juvenile offenders who commit capital crimes. The Court held that the "evolving standards of decency," mentioned in the earlier Eighth Amendment decisions, had sufficiently changed so as to

⁵ Due process requirements likely would have prohibited the execution of very young offenders in accordance with the general common law restrictions on trying juveniles for felony criminal offenses that existed at the time of the ratification of the Constitution. See, generally Thompson v. Oklahoma, 487 U.S. 815, 864 (1988) (Scalia, J., dissenting).

⁶ Thompson v. Oklahoma, 487 U.S. 815, 830 (1988).

⁷ Stanford v. Kentucky 492 U.S. 361 (1989).

⁸ 2000 Va. Acts ch. 361.

⁹ Although the General Assembly did not modify this statute prior to 2000, the mandate of Thompson v. Oklahoma was obviously binding on Virginia from 1988 onwards.

now prohibit the death penalty for offenders under the age of 18.¹⁰ The execution of persons who committed their offenses while under the age of 18 was deemed to be a “disproportionate punishment” that violated the Eighth Amendment.¹¹

V. Conclusion and Recommendation

In light of the United States Supreme Court’s recent ruling on this issue, Virginia’s statute defining the punishments for capital offenses should be modified. The change made in 2000 to *Code of Virginia* § 18.2-10 can be altered, so that a death sentence can only be imposed on someone who “was 18 years of age or older at the time of the offense.” This simple substitution of the numeral “16” to “18” is all that is required to make Virginia’s capital murder statutes comply with the recent Supreme Court edict in the Simmons decision.

It is therefore the recommendation of the Virginia State Crime Commission that this change be made to *Code of Virginia* § 18.2-10.

¹⁰ Roper v. Simmons, 543 U.S. _____, 125 S. Ct. 1183 (2005).

¹¹ It should be noted that while Roper v. Simmons prohibits the execution of juveniles who commit capital offenses, it does not prohibit them from being charged and convicted of a capital offense, nor does it prohibit them from being given a sentence of life imprisonment.

ATTACHMENT A

Senate Bill 1078

2005 SESSION

INTRODUCED

055429828

SENATE BILL NO. 1078

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact § 18.2-10 of the Code of Virginia, relating to capital punishment for minors.

Patrons—Ticer, Colgan, Devolites Davis, Lambert, Locke, Lucas, Marsh and Whipple

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-10 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-10. Punishment for conviction of felony.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, if the person so convicted was ~~16~~18 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under ~~16~~18 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. 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 \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

SB1078

ATTACHMENT B

House Bill 1975

2005 SESSION

INTRODUCED

051307260

HOUSE BILL NO. 1975

Offered January 12, 2005

Prefiled January 10, 2005

A BILL to amend and reenact § 18.2-10 of the Code of Virginia, relating to capital punishment for minors.

Patrons—Callahan, Alexander, BaCote, Bland, Brink, Dillard, Ebbin, Eisenberg, Hargrove, Jones, D.C., Melvin, Plum, Reese, Scott, J.M., Spruill, Van Yahres, Ward, Ware, O. and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-10 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-10. Punishment for conviction of felony.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, if the person so convicted was 16/18 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under 16/18 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. 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 \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

HB1975