

VIRGINIA

STATISTICAL INFORMATION

Current Governor: Mark Warner
Term of Office: Jan. 2002-Jan. 2006

Legislative Term: Jan. - Mar.

Total Inmate Pop.

(As of 5/30/05): 31,076 **White: 35%** **Black: 63%** **Latino/a: 0%** **Other: 2%***
*may include Latino/a population

Death Row Pop.

(As of 4/1/05): 23 **White: 10** **Black: 13** **Latino/a: 0** **Other: 0**

EXECUTIONS:

Since 1976: 94 **White: 48** **Black: 43** **Latino/a: 2** **Other: 1**
(As of 6/28/05)

Carried out in 2003: 2

Carried out in 2004: 5

Carried out in 2005: 0 **Scheduled for 2005:**
(As of 6/28/05)

INMATES REMOVED FROM DEATH ROW BETWEEN 1973 AND 2004
include those executed by the state or those who died of natural causes) :

(does not

Total Number: 18

Sentence/Conviction

overturned (minus
exoneration): 7

Sentence reduced: 9

Exoneration: 1

Other: 1

RELATED STATUTORY PROVISIONS:

Life without Parole: yes

Prohibits the execution of juvenile offenders: yes

Prohibits the execution of mentally retarded offenders: yes

Prohibits the execution of mentally ill offenders: no

CURRENT STATUS OF THE MORATORIUM:

Moratorium: no

Study: yes

Status: In December 2001, the Virginia Joint Legislative Audit and Review Commission issued a draft "Review of Virginia's System of Capital Punishment." The report focuses on the use of prosecutorial discretion by Commonwealth Attorneys and the judicial review of capital murder cases in which death sentences were imposed. The study found that race does not play a part in the decisions made by local prosecutors to seek the death penalty, but that the geographical location of a crime has a large impact on whether the death penalty will be sought.

HISTORY OF LEGISLATION ADDRESSING ABA ISSUES

Moratorium/ Study: **Current: 2005:** One bill failed relating to a moratorium on executions. Provides that the Commonwealth shall not conduct executions of prisoners sentenced to death. All other matters of law relating to the death penalty, such as bringing and trying capital charges, sentencing proceedings, appeals and habeas review are not affected by the bill (SB915). Another bill failed that would establish a joint subcommittee to study establishing a moratorium on the death penalty. The joint subcommittee shall examine, among other issues it deems appropriate, (i) the administration of criminal justice in Virginia to determine the extent to which the process has failed resulting in wrongful executions of innocent persons; (ii) issues concerning the death penalty including disparity, fairness, equity, due process, competence of counsel for capital defendants, and limitations on the introduction of newly discovered and possibly exculpatory evidence; (iii) the execution of individuals who were juveniles at the time of their offense, and (iv) issues involved in imposing a moratorium. The joint subcommittee shall submit its findings

and recommendations to the 2006 Session of the General Assembly (SJ318).

Previous Years: 2004: One bill failed which would have provided that the state shall not conduct executions of prisoners sentenced to death (SB47). **2003:** One bill tabled would abolish the death penalty for all Class 1 felonies committed on or after 7/1/03 (HB129); One bill died that would have established a moratorium on executions (SB709), Another bill defeated provides a moratorium on executions (HB2657). **2002 :** One bill, which called for a moratorium on executions, was defeated in committee (SB90); One bill died in committee that would have provided individuals the opportunity to note opposition to the death penalty in a central registry. Registering opposition would have ensured that the death penalty would not be sought if the registrant is later murdered, so long as the registrant also devised his or her entire estate to the Board of Corrections to defray the prisoner's cost of life imprisonment (SB10); One bill, which would have abolished the death penalty for Class 1 felonies committed on or after July 1, 2002 and would have mandated the punishment upon conviction as life imprisonment without the

possibility of parole, died in committee (HB224); One bill, which would have imposed a 2-year moratorium on executions, died in committee (HB549). **2001 :** Two bills introduced would have placed a moratorium on executions; One bill introduced would have established a joint subcommittee to study the need for a moratorium; One bill introduced would have established a moratorium pending the results of the Joint Legislative Audit and Review Commission.

Capital Offenses and Procedures:

Current: 2005: One bill signed into effect by the Governor eliminates the “triggerman rule,” which provides (with some exceptions), that only the principal in the first degree may be convicted of and punished for capital murder. The bill removes the “default” life sentence in the event a jury cannot agree on the sentence in a capital case and provides for the empanelment of a different jury for ascertaining punishment, or for sentencing by the judge upon agreement of all parties. The bill also requires defense objections on speedy trial or double jeopardy grounds be filed in writing at least seven days before trial and that all parties must agree in order to waive the provision that a hearing on defense objections be held at least three days before trial, not just the accused as under current law. The bill provides that the Commonwealth may appeal on speedy trial or double jeopardy grounds. Currently such appeal must be on the ground that a statute upon which the dismissal was based is unconstitutional (SB1177). One tabled bill would abolish the death penalty for all Class 1 felonies committed on or after July 1, 2005 (HB1879). One bill passed and sent to the Crime Commission provides that the willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of a member of a criminal street gang as criminal street gang is defined in § 18.2-46.1 is capital murder (HB1800).

Previous Years: 2004: One bill continued to 2005 renames felonies, such as a Class 1 felony is now a capital felony and a Class 2 felony is a Class 1 felony (HB1053).

Aggravating and Mitigating Circumstances:

Current: None.

Previous Years: None.

**DNA Testing and
Preservation of
Material Evidence:**

Current: 2005: One bill failed related to human biological evidence. Requires the Division of Forensic Science to store, preserve, and retain all biological evidence that is in its possession on July 1, 2005, and to develop an inventory of the evidence (SB808).

Previous Years: None.

**Crime Labs and
Medical Examiner
Offices:**

Current: None.

Previous Years: None.

**Counsel
Qualifications,
Training, and
Competency:**

Current:

Previous Years: 2004: One bill signed into effect by the governor abolishes the Public Defender Commission; establishes the Indigent Defense Commission, which will establish criteria for court-appointed attorneys as well as assume the duties of the Public Defender Commission (HB1056, SB330). Another bill signed into effect by the governor requires that at least two attorneys be appointed in capital cases; allows capital defense unit attorneys to make a motion to the circuit court to withdraw as counsel of record if prior to the indictment the Commonwealth declares in writing that it will not seek the death penalty (SB177)2002 : One bill signed into law requiring the Virginia Public Defender Commission to establish four regional capital defense units by the end of fiscal year 2004 and requiring that counsel in capital cases be appointed from both the list of qualified attorneys developed by the Supreme Court and from one of the capital defense units established by the Public Defender Commission (Chapter No. 614 of 2002); 2001: One bill signed into law requires improved standards for capital defense

counsel for both indigent and non-indigent defendants, including training in DNA and other forensic evidence analysis and introduction.

**Counsel
Compensation:**

Current: 2005: One bill tabled increases by 50 percent the compensation allowed to court-appointed counsel in the district court and circuit court. The changes shall become effective only if sufficient funds are appropriated by the 2005 General Assembly (HB1596).

Previous Years: 2002 : One bill, which would have provided that a defendant represented by appointed counsel be permitted to file a motion seeking appointment of one or more experts or funding for expert assistance, died in committee (HB815).

Judges and Juries:

Current: 2005: One bill failed that would remove the “default” life sentence in the event a jury cannot agree on the sentence in a capital case and provides for the empanelment of a different jury for ascertaining punishment, or for sentencing by the judge upon agreement of all parties. The bill also required defense objections on speedy trial or double jeopardy grounds be filed in writing at least seven days before trial and that all parties, not just the accused as under current law, must agree in order to waive the provision that a hearing on defense objections be held at least three days before trial. The bill provided that the Commonwealth may appeal on speedy trial or double jeopardy grounds. Currently, such appeal must be on the ground that a statute upon which the dismissal was based is unconstitutional (HB2773).

Previous Years: None.

Racial and Ethnic Minorities:

Current: None.

Previous Years: None.

Juvenile Offenders:

Current: 2005: One bill passed and was sent to the Crime Commission, relating to the elimination of capital punishment for minors. Restricts the death penalty to those who are 18 years of age or older at the time of the capital offense. Currently, the age is 16 or older at the time of the offense (HB1975, SB1078).

Previous Years: 2004: One bill failed which would have raised the minimum age requirement for the death penalty from 16 to 18 (must be age 18 or older at the time of the offense to qualify for the death penalty) (HB1341).

Mental Retardation, Mental Disability and Mental Competency:

Current: 2005: One bill signed into effect by the governor provides that in any felony criminal case where the defendant's sanity is in issue and defendant obtains his own expert to evaluate him, the expert shall prepare a full report and shall provide it to the attorney for the Commonwealth (HB2678).

Previous Years: 2003: Bills signed into action by the governor would establish standards for determining mental retardation and, consequently, eligibility for the death penalty (SB1141, SB1239, SB1241, HB1923) 2002 : One bill, which would have prohibited the imposition of the death penalty on mentally retarded persons, passed the Senate unanimously, but was held over for consideration next year in the House (SB497); Another bill, which would have prohibited the imposition of the death penalty on mentally retarded persons, was continued to 2003 (HB957).

Special Notes- Wrongful Incarceration:

Previous Years: 2004 : One bill sent to the governor provides guidelines for the compensation of persons wrongfully incarcerated (HB638, incorporates HB631 and the identical Senate bill 271).

Special Notes- Habeas Corpus:

Current: 2005: One bill signed into effect by the governor regards Writ of Habeas, Delayed criminal appeal. Sets out a procedure for a defendant to move for leave to pursue a delayed appeal from circuit court to the Court of Appeals and from the Court of Appeals to the Supreme Court when an appeal in a criminal case was never initiated or was dismissed for failure to adhere to proper form, procedures and time limits due to error, neglect, or fault of counsel representing the appellant, or of the court reporter, or of the court or an officer or employee of the court. The motion must be made within six months of dismissal or of the lower court judgment, whichever is later (HB2628). One bill failed regarding Habeas corpus; inadequacy of counsel. Provides that where a petitioner alleges inadequacy of counsel in his habeas petition, he is deemed to waive attorney-client privilege relative to such counsel. Counsel may, upon request of the court or any party to the habeas proceeding, reveal confidential information provided by the client or on behalf of the client during the course of counsel's professional relationship with the client (HB2829).

Special Notes- Innocence:

Previous Years: 2004: One bill signed into effect by the governor establishes a one-opportunity procedure for a convicted felon to petition the Court of Appeals for a writ of actual innocence based on nonbiological previously unknown or unavailable evidence (SB333). Another similar bill continued to 2005 establishes a procedure in which a convicted felony can petition the Court of Appeals for a writ of actual innocence based on nonbiological evidence that was previously unknown or unavailable (SB218).

Special Notes-Post Conviction Relief:

Current: 2005: One bill failed regarding the Freedom Restoration Act; post-conviction relief. Amends provisions added to the Code during the 2004 General Assembly Session regarding writs of actual innocence based on non-biological evidence by removing the provision that the petitioner must have pled not guilty, the limit of one writ per conviction and the requirement that the evidence was previously unknown or unavailable to the petitioner or his trial attorney at the time the conviction became final. The bill allows the writ if the reason the evidence was not obtained was because of the failure of trial counsel to exercise due diligence, and changes the standard for issuance of the writ to substantial doubt about the petitioner's guilt. The circuit court may order an evidentiary hearing if necessary for the petitioner to develop additional facts (HB1805). Another bill failed on Post-conviction relief. Would amend provisions added to the Code during the 2004

Special Notes:

Current: 2005: One bill signed into effect by the Governor proscribes the execution of an inmate while she is pregnant. The bill requires the Department of Corrections, if it finds that such female inmate is pregnant, to petition the sentencing court for a new execution date, which is at least 10 months later than the original execution date. The bill does not give the court discretion to determine the accuracy of the Department's finding but only the authority to set a new execution date (HB1812).

Previous Years: 2004 : One bill introduced provides that no pregnant woman shall be put to death (HB134). One bill signed by the Governor provides that when a court sets aside a sentence of death for a sentence of life imprisonment without the possibility of parole, it must give an explanation for the reduction of sentence in the sentencing order (HB755). One bill that passed both House and Senate clarifies that victim impact testimony is to be heard by the trier of fact, either upon a guilty plea or upon a finding of guilt after a trial (HB1083).

STATE AND LOCAL GOVERNMENTS AND LEGAL ORGANIZATIONS THAT HAVE PASSED MORATORIUM RESOLUTIONS

Charlottesville Albemarle Va. Bar Association, April 15, 1999
Harrisonburg/Rockingham County Bar Association, Feb. 14, 2001
Virginia College of Criminal Defense Attorneys, May 20, 1999
Virginia Trial Lawyers Association, June 2001
Warren County Bar Association
City of Blacksburg
City of Charlottesville
City of Lexington

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