

Virginia State Crime Commission

Capital Murder of Firefighters

2008

CAPITAL MURDER OF FIREFIGHTERS

Background

Virginia inherited the death penalty from English common law. In 1612, Virginia's Governor, Sir Thomas Dale, activated the Divine, Moral and Martial Laws that greatly expanded Virginia's death penalty to apply to even minor crimes such as killing dogs or chickens, or stealing grapes. However, Virginia's death penalty was soon softened due to fears that Virginia would not be attractive to future settlers. Daniel Frank became the first person criminally executed in 1622 for the crime of theft. The first major change to the death penalty after the American Revolution came on December 15, 1796, when the Commonwealth of Virginia passed chapter CC. This statute stated that "no crime whatsoever committed by any freeperson against this commonwealth, (except murder in the first degree) shall be punished with death within the same." This in effect, abolished the death penalty for all crimes except first degree murder. First degree murder in this statute was defined as:

"all murder which shall be perpetrated by means of poison, or by lying in wait, or by duress of imprisonment or confinement, or by starving, or by willful, malicious and excessive whipping, beating, or other cruel treatment or torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempted perpetration any arson, rape, robbery, or burglary, fall henceforth be deemed murder in the first degree. And all other kinds of murder, shall be deemed murder of the second degree, and the jury, as heretofore, shall ascertain their verdict, whether it be murder in the first or second degree."

The Virginia General Assembly, in 1975, completely overhauled Virginia's capital murder statute in response to the US Supreme Court decision in *Furman V. Georgia*. The new legislation set apart offenses defined and punished as capital murder, in contrast with first degree murder. The 1975 capital murder statute in Va. Code § 18.2-31, specified:

- a) the willful, deliberate and premeditated killing of any person in the commission of abduction as defined in §18.2-48, when such abduction was committed with the intent to extort money, or pecuniary benefit;
- b) the willful, deliberate and premeditated killing of a human being by another for hire; and
- c) the willful, deliberate and premeditated killing by an inmate in a penal institution as defined in §18.2-32, or while in the custody of an employee thereof

Since 1976 Virginia's capital murder statute has been amended to include fifteen subsections that qualify as capital eligible if the offense results in a premeditated homicide. They include:

1976: Murder while in the commission of robbery while armed with a deadly weapon, murder in the commission of, or subsequent rape.

1977: Murder of a law-enforcement officer while in the performance of his duties.

1981: Murder of more than one person as part of the same act or transaction.

1982: Murder of any person by a prisoner confined in a state or local correctional facility.

1985: Murder of any child under twelve.

1989: Murder in the commission of attempted robbery or attempted rape.

1990: Murder of any person in the commission or attempted commission of a violation of Va. Code § 18.2-248, involving a Schedule I or II substance.

1991: Murder in the commission of or attempted forcible sodomy.

1995: Murder in the commission of object penetration.

1996: Murder of more than one person within a three year period.

1997: Murder of any law enforcement officer of another state or United States having the power to arrest for a felony.

1997: Murder pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection I of Va. Code § 18.2-248; and, murder of a pregnant woman by one who knows the woman is pregnant to cause a involuntary termination of pregnancy.

1998: Murder of a person under fourteen by a person over the age of twenty one.

2002: Murder as an act of terrorism.

2007: Murder of a judge, when the killing is for the purpose of interfering with his duties; and, murder of a witness in a criminal case after a subpoena has been issued, when the killing is for the purpose of interfering with the person's duties in such case.

Analysis

A number of activities were undertaken to examine this issue. First, Crime Commission staff conducted a 50 state survey to see how many states make it a capital offense to murder a firefighter. Second, firefighter deaths in Virginia in the past five years were reviewed. Finally, Senate Bill 384 was then reviewed for any possible amendments to Va. Code § 18.2-31.

Of the 37 states that have capital punishment, 21 make the killing of a firefighter either a capital crime or an aggravating factor in the consideration of a death sentence. It should be noted that while it is not expressly stated, Nebraska has extremely broad language in its capital murder statute that could theoretically include firefighters. The Nebraska statute includes, "Murder committed knowingly to disrupt or hinder the lawful exercise of any government function or enforcement of the laws."

Every state that makes the premeditated killing of a firefighter a capital eligible crime requires that the offender must know, or should have known that the victim is a firefighter. It is also a requirement that the killing occur while the firefighter is in the performance of his duties, except in Illinois, Indiana, Louisiana, South Carolina and Utah's statutes where the more broadly written statutes include the killing of a

firefighter related to the performance of his or her duties. Should an off duty firefighter, or arson investigator be murdered, and if the motivation for the crime is found to be because of a response to a 911 call or an arson investigation, then the perpetrator could be charged with capital murder. South Carolina's and Utah's statutes also include the murder of former firefighters.

If the language of SB 384 were adopted, it would also make the premeditated killing of an emergency medical service worker, emergency medical technician, or rescue worker a capital eligible offense. Of the 37 states that have capital murder, only Tennessee expressly covers EMS, EMT, rescue workers and paramedics. As of August 2008, there were 39,792 career and volunteer firefighters in the Commonwealth of Virginia. Additionally, there were another 34,269 EMS providers in the state. Therefore, approximately 75,000 firefighters and EMS/EMT personnel would potentially be covered in this bill.

Crime Commission staff also reviewed the number of Virginia firefighters who have died in the line of duty, in order to see if any would qualify for capital murder under the provisions of the proposed legislation. Since 2004, there have been seventeen deaths of firefighters in the Commonwealth. However, none of these deaths arose as a direct result of arson or an intentional killing while in the performance of their official duties.

Conclusion

The Commission voted to endorse legislation that would add to Va. Code § 18.2-31 "willful, deliberate, and premeditated killing of a fire marshal appointed pursuant to § 24-30 or assistant fire marshal appointed pursuant to § 27-36, when such fire marshals and assistant fire marshals have police powers as set forth in §§ 27-34.2 and 27-34.2:1."