

1-1-2001

The Death Penalty in Virginia: Attempts at Legislative Reform

Tara Elgie

Follow this and additional works at: <http://scholarship.richmond.edu/pilr>

 Part of the [Human Rights Law Commons](#), [Legislation Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Tara Elgie, *The Death Penalty in Virginia: Attempts at Legislative Reform*, 6 RICH. J.L. & PUB. INT. 35 (2001).
Available at: <http://scholarship.richmond.edu/pilr/vol6/iss1/4>

This Article is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in Richmond Public Interest Law Review by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

THE DEATH PENALTY IN VIRGINIA: ATTEMPTS AT LEGISLATIVE REFORM

Tara Elgie

APPLICATION OF THE DEATH PENALTY: THE EARL WASHINGTON, JR. CASE

On February 12, 2001, Earl Washington, Jr. was released from prison—eighteen years after he was wrongly convicted of raping and stabbing a nineteen-year-old woman and sentenced to death. At one point during his prison term, Washington came within nine days of execution.¹³⁹ Washington was sentenced to death in March of 1984, after a jury convicted him of raping and repeatedly stabbing Rebecca Lynn Williams in the bedroom of her apartment, a capital murder offense.¹⁴⁰ Washington, who has an I.Q. of approximately 69, confessed to the murder no fewer than three times and was convicted on the basis of these confessions, as well as his admission to owning a shirt that was linked to the crime scene.¹⁴¹

The confessions were elicited after Washington was arrested for breaking into the house of an elderly neighbor while drunk, stealing a gun, and using that gun to shoot his brother in the foot.¹⁴² Upon his arrest in those incidents, Washington was questioned about Williams' murder.¹⁴³ He confessed to the crime, but his confession contained errors, and at trial he pled not guilty and denied having confessed to the murder, stating that the attorneys were lying.¹⁴⁴ His lawyers would later argue that the police asked leading questions, and fed him the details of the Williams murder during their questioning to elicit those confessions.¹⁴⁵

At the time of the trial, DNA technology was not available to test

139. Frank Green, *Washington Released: Former Death Row Inmate Thanks Supporters on First Day Out*, RICH. TIMES DISPATCH (Va.), Feb. 13, 2001, at B1.

140. *Washington v. Commonwealth*, 228 Va. 535 (1984).

141. *Washington v. Murray*, 4 F.3d 1286, 1286 (4th Cir. 1993).

142. See Green, *supra* note 1, at B1.

143. *Washington v. Commonwealth* at 542-43.

144. *Id.* at 543.

145. *Id.*

RICHMOND JOURNAL OF LAW AND THE PUBLIC INTEREST

seminal fluid stains from a blanket found in Williams' bedroom.¹⁴⁶ In 1993, the Virginia Attorney General's office approved DNA testing in the case for five seminal fluid stains found on the blanket.¹⁴⁷ Washington's first *habeas* petition was dismissed without a hearing, but on remand the district court considered forensic evidence relating to the five seminal fluid stains.¹⁴⁸ Based on conflicting scientific testimony regarding the DNA evidence, the court ruled that it was inconclusive, since it could not be determined whether the stains were pure seminal fluid.¹⁴⁹ However, the court noted that if the stains were pure seminal fluid, then neither Washington, nor Williams' husband, could have left them.¹⁵⁰ Such evidence that the seminal fluid belonged to neither Washington nor Williams would suggest the presence of a third party in the room, thereby raising doubt as to Washington's guilt.

In 1994, based on DNA which suggested that Washington was not the assailant, then-Governor L. Douglas Wilder commuted Washington's sentence to life in prison.¹⁵¹ In 2000, Washington's lawyers asked Governor Jim Gilmore for additional DNA testing, arguing that improved technology might be able to establish Washington's guilt or be used to exonerate him.¹⁵² In October 2000, Gilmore announced that further DNA testing had found no trace of Washington at the crime scene, but rather implicated a convicted rapist already in prison.¹⁵³ Having determined that a jury might have reached a different verdict if they had been presented with this evidence, Gilmore issued an absolute pardon to Washington.¹⁵⁴

Washington could be exonerated only by the Governor through clemency proceedings, not by the courts, because of Virginia's so-called 21-day rule.¹⁵⁵ This rule states that "all final judgments, orders, and decrees, irrespective of terms of the court... [are] subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer."¹⁵⁶ In essence, as happened with Earl Washington, Jr., this

146. See Green, *supra* note 1, at B1.

147. *Id.*

148. *Washington v. Murray*, 4 F.3d 1286 (4th Cir. 1993).

149. *Id.* at 1288.

150. *Id.*

151. Green, *supra* note 1, at B1.

152. *Id.*

153. *Id.*

154. *Id.*

155. Va. R. S. Ct. Rule 1:1.

156. *Id.*

rule precludes the introduction of new evidence post- conviction, even if that evidence may entirely exculpate the defendant.

This paper will argue that the time has come for legislative reform of capital punishment. It will briefly examine the history of the death penalty, focusing on the provisions under which it was reinstated and whether those provisions are met under today's implementation. Then it will look to recent attempts by the Virginia General Assembly to reform the procedures by which it implements the death penalty. The paper will also explore public perception of the death penalty as an explanation for why the death penalty persists as the ultimate punishment, despite recent problems with its implementation.

A HISTORICAL EXAMINATION OF THE DEATH PENALTY

The death penalty was abolished in the United States in 1972 when the Supreme Court found the practice of the death penalty to be constitutionally unacceptable, because it was implemented in an arbitrary and capricious manner.¹⁵⁷ In his concurring opinion in this case, Justice Douglas concluded that the death penalty was unconstitutional because of its discriminatory application, and stated that it is "cruel and unusual to apply the death penalty selectively to minorities whose numbers are few, who are outcasts of society, and who are unpopular, but whom society is willing to see suffer."¹⁵⁸ Moreover, Justice White, in his concurrence, stated that a major goal of the criminal law is to deter others by punishing the convicted criminal, but that such purpose is lost in a system where the penalty is so seldom invoked that it ceased to influence the conduct of others.¹⁵⁹

Four years later, in *Gregg v. Georgia*, the Supreme Court ruled that the concerns expressed in *Furman* regarding the arbitrary and capricious manner in which the death penalty was imposed had been rectified by legislative reform in Georgia.¹⁶⁰ In *Gregg*, the Court found that sentencing discretion "must be suitably directed and limited so as to

157. *Furman v. Georgia*, 408 U.S. 238, 239 (1972) (holding that "the imposition and carrying out of the death sentence in the present cases constitute cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments.").

158. *Id.* at 245.

159. *Id.* at 312.

160. *See Gregg v. Georgia*, 428 U.S. 153 (1976).

RICHMOND JOURNAL OF LAW AND THE PUBLIC INTEREST

minimize the risk of wholly arbitrary and capricious action.”¹⁶¹ The Court went on to find that Georgia had effectively eliminated the randomness from death sentencing by imposing a bifurcated sentencing procedure, ensuring that specific factors were considered when imposing the death penalty, and by providing meaningful appellate review.¹⁶²

ATTEMPTS TO REFORM THE DEATH PENALTY IN VIRGINIA

The Georgia legislature may have effectively revised its death penalty procedures to ensure that death sentences are not “imposed capriciously or in a freakish manner”;¹⁶³ however, there is evidence that Virginia’s procedures, especially in the realm of appellate review, are arbitrary and capricious. Widely publicized death penalty cases, like the Washington case, have led to calls on the Virginia General Assembly to modify the 21-day rule. In a state ranking second only to Texas in the number of convicted criminals executed since the death penalty was reinstated in 1976,¹⁶⁴ bills making it harder for Virginia to execute prisoners do not pass the General Assembly easily. Approximately seventeen different bills potentially impacting implementation of capital punishment in Virginia were introduced in the General Assembly during the 2001 session.¹⁶⁵ Of those, only three were approved.¹⁶⁶

Proposing a Death Penalty Moratorium

Four separate bills introduced by the Virginia General Assembly in the 2001 term proposed issuing a moratorium on executions pending a study by the Joint Legislative Audit and Review Commission (JLARC) on the process and administration of the death penalty in Virginia.¹⁶⁷ None of

161. *Id.* at 189.

162. *Id.* at 190-195.

163. *Id.* at 195.

164. Jim Oliphant, Dateline: Northern Va., *LEGAL BUS.*, Feb. 24, 2000, at 20.

165. *See supra* notes 28, 29, 35, 37, 55-60 and accompanying text.

166. *See* H.B. 1366, Storage and testing of certain evidence, writ of actual innocence, Gen. Assem., Reg. Sess. (Va. 2001) (approved by Gov. Gilmore, May 2, 2001, Chapter 873, effective May 2, 2001); H.B. 2580, Counsel in capital cases, Gen. Assem., Reg. Sess. (Va. 2001) (approved by Gov. Gilmore Mar. 26, 2001, Chapter 766, effective Jan. 1, 2002); H.B. 2802, Criminal procedure; retention of evidence, Gen. Assem., Reg. Sess. (Va. 2001) (approved by Gov. Gilmore May 2, 2001, Chapter 875, effective July 1, 2001).

167. *See* S.B. 1135, Executions of prisoners; moratorium, Gen. Assem., Reg. Sess. (Va. 2001) (Senate: Failed to report (defeated) in Courts of Justice Committee, Feb. 4, 2001); H.B. 2764, Executions of prisoners; moratorium, Gen. Assm., Reg. Sess. (Va. 2001) (House: Passed by indefinitely in Courts of

those bills passed this session. The text of these bills was virtually identical, the text of the summary as introduced reads as follows:

...[T]he Commonwealth shall not conduct any executions of prisoners sentenced to death until July 1 [2001] following the JLARC study on the death penalty. The bill is a suspension of executions only. All other matters of law related to the death penalty, including the bringing and trying of capital charges, sentencing proceedings, imposing the death sentence, appeals, and habeas review are not affected.¹⁶⁸

In the preambles to the execution moratorium bills, the patrons recognize that imposition of the death penalty is the ultimate penalty.¹⁶⁹ The bills also indicate that questions have arisen about the disparity, fairness, equity, and due process requirements when the death penalty was imposed.¹⁷⁰ Furthermore, the patrons note in these bills that Earl Washington, Jr. was convicted and twice scheduled to be executed, but later shown to be innocent and granted an absolute pardon for capital murder.¹⁷¹ For all those reasons, the patrons state that a thorough review of the process is necessary, that a final report based on a study by JLARC is expected to be submitted to the General Assembly in late 2001, and urge in the meantime that executions be suspended.¹⁷²

Three separate execution moratorium bills were introduced in the house and ultimately merged into one, H.B. 2764, introduced by Delegate Almand.¹⁷³ On February 1, 2001, the House Courts of Justice committee passed down H.B. 2764 indefinitely.¹⁷⁴

In addition to the aforementioned execution moratorium bills, Delegate Hargrove introduced H.B. 1827, which would abolish the death

Justice Committee, Feb. 1, 2001); H.B. 2664, Executions of prisoners; moratorium, Gen. Assem., Reg. Sess. (Va. 2001) (House: Incorporated by Courts of Justice Committee (HB2764) Feb. 1, 2001); H.B. 2799, Executions of prisoners; moratorium, Gen. Assem., Reg. Sess. (Va. 2001) (House: Incorporated by Courts of Justice Committee (HB2764) Feb. 1, 2001) ("the execution moratorium bills"), available at <http://leg1.state.va.us/011/bil.htm>.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. See H.B. 2799, H.B. 2664, and H.B. 2764, *supra* note 29.

174. H.B. 2764, *supra* note 29.

RICHMOND JOURNAL OF LAW AND THE PUBLIC INTEREST

penalty for Class 1 felonies committed after July 1, 2001.¹⁷⁵ This bill would replace the death penalty with a sentence of life imprisonment without the possibility of parole for Class 1 felonies.¹⁷⁶ The bill would not be retroactive, and therefore leaves intact the majority of death penalty statutes for the prosecution or appeal of a death sentence occurring prior to the change in law.¹⁷⁷ H.B. 1827 was passed by indefinitely by the House Courts of Justice Committee on February 1, 2001.¹⁷⁸

Abolishing the 21-Day Rule in Virginia

The 21-day rule is a legislative limit on evidentiary appeals. This rule has been widely criticized in Virginia, and for several years legislation aimed at extending or abolishing the time limit for evidentiary appeals have been introduced in the General Assembly.¹⁷⁹ In 2000, a bill proposed by Delegate Almand to extend the evidentiary appeal limit to three years was met at first with widespread support, passing the House by a 73-25 margin, but failed to pass in 2000 after Governor Gilmore vowed to veto the bill.¹⁸⁰ However, perhaps in response to the publicity that the 21-day rule received in connection with the Earl Washington, Jr. case, the 2001 General Assembly successfully introduced legislation aimed at reforming the 21-day rule. On May 2, 2001, Governor Gilmore signed S.B. 1366. This legislation establishes a procedure for the storage, preservation and retention of human biological evidence in felony cases and had broad support within the General Assembly this session.¹⁸¹ The legislation also establishes a procedure for a convicted felon to petition the circuit court that entered the conviction to apply for a new scientific investigation of human biological evidence.¹⁸² However, before the court will allow testing, five provisions must be met:

- (i) the evidence was not known or available at the time the conviction became final or not previously tested because the testing procedure was not available at

175. H.B. 1827, Death Penalty, Gen. Assem., Reg. Sess. (Va. 2001) (House: Passed by indefinitely in Courts of Justice Committee, Feb. 1, 2001), available at <http://leg1.state.va.us/011/bil.htm>.

176. *Id.*

177. *Id.*

178. *Id.*

179. Oliphant, *supra* note 26.

180. *Id.*

181. S.B. 1366, *supra* note 28.

182. *Id.*

the Division of Forensic Science at the time; (ii) the chain of custody establishes that the evidence has not been altered, tampered with, or substituted, (iii) the testing is materially relevant, noncumulative, and necessary and may prove the convicted person's actual innocence; (iv) the testing requested involves a scientific method employed by the Division of Forensic Science; and (v) the convicted person did not unreasonably delay the filing of the petition after the evidence or the test for the evidence became available.¹⁸³

Additionally, the petition must state not only the reasons why the evidence was not known or tested by the time the conviction became final, but also why the newly discovered or untested evidence may prove the actual innocence of the person convicted.¹⁸⁴ SB 1366 is the result of collaborative effort between state legislators, notably Senator Stolle who introduced the bill, and a special force created by the Virginia State Crime Commission.¹⁸⁵ The special force, lead by Stolle, consists of defense attorneys, prosecutors, legislators of both parties, and capital punishment supporters and opponents.¹⁸⁶ The bill enjoyed widespread support from the legislators, but it also has its critics.¹⁸⁷

For example, opponents argue that SB 1366 sets the standards for admitting new evidence too high and allows evidence to be destroyed after the inmate has been executed.¹⁸⁸ Furthermore, opponents argue that the bill is too restrictive because it only applies to scientific evidence, while other evidence is still subject to the 21-day rule.¹⁸⁹ Such opponents argue that DNA evidence supports a small number of death row cases and only eliminating the 21-day rule will effectuate meaningful death penalty reform in Virginia.¹⁹⁰ The director of Virginians for Alternatives to the Death Penalty notes that of ninety-three former death row inmates, only ten had DNA evidence to exonerate them, the rest were cleared only when witnesses changed their stories or trial errors

183. *Id.*

184. *Id.*

185. Frank Green, *Death Penalty Foes Rap Bill; They Say '21-Day Rule' Measure is Deficient*, RICH. TIMES DISPATCH (Va.), Jan. 29, 2001, at B1.

186. *Id.*

187. *Id.*

188. *Id.* (citing Henry Heller, Director, Virginians for Alternatives to the Death Penalty).

189. *Id.* (citing Heller and Kent Willis, Director, American Civil Liberties Union of Virginia).

190. *Id.*

RICHMOND JOURNAL OF LAW AND THE PUBLIC INTEREST

were found.¹⁹¹ SB 1366 would not have helped those death row inmates. According to these opponents, only a bill that allows a person to step forward at any time with any evidence of innocence, DNA or otherwise, will be acceptable.¹⁹²

Other Death Penalty Reform Bills in Virginia

Two other capital punishment reform bills of note were passed during the 2001 session and signed into law by Governor Gilmore. (1) HB 2580, introduced by Delegate McDonnell, directs the Supreme Court of Virginia and the Public Defender Commission to develop standards and a list of capital-qualified attorneys to represent both indigent and non-indigent defendants.¹⁹³ (2) HB 2802 requires that any human biological evidence, including fingerprinting, chemical analysis, blood or DNA analysis, used in a felony trial wherein the defendant is convicted must, upon motion by the defendant, be retained for fifteen years, and if the person is sentenced to death shall be kept until the judgment is executed.¹⁹⁴

However, many other capital reform bills were introduced and defeated this session. Included in that set was: a bill that would allow juries on death penalty cases to be informed that there was an individual sentenced to death in the Commonwealth who was twice scheduled to be executed and who was later granted an absolute pardon on the basis of DNA testing;¹⁹⁵ a joint resolution directing the Crime Commission to study the feasibility of creating a system in which innocent people convicted of crimes and incarcerated may recover damages;¹⁹⁶ a joint resolution to establish a joint subcommittee to study the need for a moratorium on death sentence executions;¹⁹⁷ and a bill allowing for

191. *Id.* (citing Heller).

192. *Id.* (citing Willis).

193. H.B. 2580, Counsel in capital cases, Gen. Assem., Reg. Sess. (Va. 2001) (approved by Governor Gilmore, Mar. 26, 2001, Chapter 766, effective Jan. 1, 2002), *available at* <http://leg1.state.va.us/011/bil.htm>.

194. H.B. 2802, Criminal Procedure; retention of evidence, Gen. Assem., Reg. Sess. (Va. 2001) (Approved by Governor Gilmore, May 2, 2001, Chapter 875 effective July 1, 2001), *available at* <http://leg1.state.va.us/011/bil.htm>.

195. H.B. 1590, Capital Murder, Gen. Assem., Reg. Sess. (Va. 2001) (passed by indefinitely in House Courts of Justice Committee, Feb. 1, 2001), *available at* <http://leg1.state.va.us/011/bil.htm>.

196. H. Joint Res. 630, Study; compensation for wrongly convicted persons, Gen. Assem., Reg. Sess. (Va. 2001) (passed by indefinitely in the House Rules Committee, Feb. 4, 2001), *available at* <http://leg1.state.va.us/011/bil.htm>.

197. H. Joint Res. 508, Study; death penalty, Gen. Assem., Reg. Sess. (Va. 2001) (tabled in House

post-conviction testing of biological material for DNA for the purpose of establishing innocence.¹⁹⁸

PUBLIC OPINION OF THE DEATH PENALTY

The large number of bills addressing capital punishment that were introduced in the 2001 session indicates that the Virginia General Assembly is concerned about how the state is implementing the death penalty. Despite widely publicized incidents of failures in death penalty implementation, like the Earl Washington, Jr. case, public support for the death penalty remains fairly strong. A Gallup Poll survey conducted in February, 2001, indicates that 67% of Americans favor the death penalty, while 25% are opposed.¹⁹⁹ However, public support has been on a downward trend since 1994, when public support for the death penalty peaked at 80%.²⁰⁰ Likewise, in Virginia, 75% still favor capital punishment, but that number is down from 80% in 1997.²⁰¹ Yet when posed with “the alternative of a life sentence without the possibility of parole,” 45% would agree with eliminating the death penalty; women (51% versus 38% for men) are most supportive of this alternative.²⁰² Furthermore, polls indicate that 74% of Virginians oppose the 21-day rule.²⁰³ This indicates they are unsatisfied with Virginia’s current implementation of the death penalty.

In March 1972, the last Gallup Poll survey prior to the Supreme Court’s ruling in *Furman v. Georgia*, public support of the death penalty was 50% with 41% opposed.²⁰⁴ By 1976, when the Court reinstated the death penalty in *Gregg v. Georgia*, public support for the death penalty had risen to 66% with 26% opposed.²⁰⁵ Thus, Gallup Poll surveys seem

Rules Committee, Feb. 4, 2001), available at <http://leg1.state.va.us/011/bil.htm>.

198. H.B. 2349, Innocence Protection Act of 2001 (testing material for DNA), Gen. Assem., Reg. Sess. (Va. 2001) (tabled in House Courts of Justice Committee, Feb. 1, 2001), available at <http://leg1.state.va.us/011/bil.htm>.

199. Gallup Poll, Two-Thirds of Americans Support the Death Penalty (March 2, 2001), www.gallup.com/poll/releases/pr010302.asp (last visited, Sept. 16, 2001) (hereinafter Gallup Poll).

200. *Id.*

201. Alan E. Bayer & Susan M. Willis-Walton, Quality of Life in Virginia: 2000 (Research Design and Highlights), Center for Survey Research, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, July 2000 at 17, available at <http://filebox.vt.edu/centers/survey/qol/highlights.html>.

202. *Id.*

203. See Virginians for Alternatives to the Death Penalty, at <http://www.vadp.org/21day.htm> (last visited, Sept. 16, 2001).

204. Gallup Poll, *supra* note 61.

205. *Id.*

RICHMOND JOURNAL OF LAW AND THE PUBLIC INTEREST

to indicate that while Americans are beginning to question whether the death penalty, as currently implemented, is the proper punishment for persons convicted of capital crimes, levels of disapproval are still far from matching the disapproval indicated in 1972 when the death penalty was declared unconstitutional.

Although public perception has not yet dropped to levels recorded in 1972, not only is the general public increasingly skeptical about death penalty implementation, so too are some notable legal experts. In her July 3, 2001, speech at the annual meeting of Minnesota Women Lawyers in Minneapolis, Justice O'Connor publicly expressed concerns about the manner in which the United States is implementing the death penalty.²⁰⁶ Specifically, O'Connor questioned whether the punishment is being administered fairly and whether the performance of trial lawyers is meeting constitutionally acceptable standards.²⁰⁷ O'Connor's comments are interesting both because she is typically a critical swing vote needed to form a 5-4 majority on a divided court, and because her comments seem to echo some concerns expressed by the *Furman* court in 1972, particularly those about the fairness of its implementation.²⁰⁸ In that speech, O'Connor noted "If statistics are any indication, the system may well be allowing some innocent defendants to be executed."²⁰⁹ Likewise, in an April 9, 2001, speech at the University of the District of Columbia, Justice Ginsburg expressed her support for a moratorium on the death penalty, noting that defendants with good lawyers "do not get the death penalty."²¹⁰

CONCLUSION

As the number of death row inmates executed continues to rise, so too do concerns about the fairness of death penalty implementation in the United States. In Virginia, Earl Washington, Jr. was granted an absolute pardon after having twice come within days of execution because he was unable to introduce DNA evidence that had the potential to exonerate him. Virginia's 21-day rule violates one of the critical

206. Frank Green, *Death Penalty Doubts Arise: O'Connor Questions Whether Laws Always Protect the Innocent*, RICH. TIMES DISPATCH (Va.), July 9, 2001, at A1.

207. *Id.*

208. *Id.*

209. *More Death Penalty Doubts*, USA TODAY, July 6, 2001, at A11.

210. Anne Gearan, The Associated Press, *Supreme Court Justice Backs Proposed Death penalty Freeze in The Record*, Apr. 10, 2001, at A18.

safeguards articulated in *Gregg v. Georgia* – meaningful appellate review.²¹¹ By limiting the time frame within which potentially exculpatory evidence can be introduced, the 21-day rule seemed to propagate arbitrary and capricious implementation of the death penalty in Virginia, because appellate courts are precluded from examining all relevant information before upholding the death penalty. In *Furman*, the Court recognized limitations in Georgia's sentencing procedures and issued a moratorium on executions until the legislature could address those concerns. Recently, at a nationwide level, two sitting Supreme Court Justices have publicly expressed concern about how the death penalty is implemented in the United States. In Illinois, thirteen people on death row were exonerated for their crimes, prompting Governor George Ryan to issue a moratorium on executions in Illinois pending a committee review on the flaws of the death penalty system in that state.²¹² In Virginia, Earl Washington, Jr.'s case has highlighted the problems with Virginia's evidentiary procedures. Although the General Assembly declined to approve a moratorium on capital punishment pending further study, the legislators did attempt to respond to critics of the death penalty by passing legislation that makes evidentiary review more feasible and establishes higher standards for death penalty counsel. These attempts at legislative reform target the problems noted by Justices O'Connor and Ginsburg; however, it is yet to be determined whether this legislative reform will solve the problems with Virginia's implementation of the death penalty.

211. See *Gregg v. Georgia*, 428 U.S. 153 (1976).

212. Ken Armstrong and Steve Mills, *Ryan: 'Until I Can Be Sure'; Illinois Is First State to Suspend Death Penalty*, CHI. TRIB., Feb. 1, 2000, at 1.