



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 855
Enrolled
(Patron Prior to Enrollment – Marsden)

LD #: Enrolled

Date: 2/27/2015

Topic: Determination of mental retardation in capital cases

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0)*
- **Juvenile Detention Facilities:**
None (\$0)*

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal modifies § 19.2-264.3:1.1, relating to capital cases. Currently, an individual may be classified as mentally retarded if he or she exhibits significant limitations in adaptive behavior and demonstrates significantly subaverage intellectual functioning, as shown by performance on a standardized measure of intellectual functioning (IQ test) that is at least two standard deviations below the mean.

Under the proposal, the measures relating to intellectual functioning must be reported as a range of scores calculated by adding and subtracting the standard error of measurement identified by the test publisher to the defendant's earned score. As a result, the term "mentally retarded," as defined in § 19.2-264.3:1.1, would take into consideration the standard error of measurement for the specific standardized measure of intellectual functioning administered. In effect, the modification in the definition could allow additional individuals to be exempted from the imposition of the death penalty if their IQ score falls within the test's acknowledged and inherent margin of error.

The proposal was likely precipitated by a United States Supreme Court decision (*Hall v. Florida*, 2014), in which the Supreme Court ruled that a Florida statute that only takes into consideration a strict IQ point cut off, without regards to the limitations of the instrument, was unconstitutional. As a result, when an IQ score falls within the test's margin of error, the defendant must be able to present additional evidence of intellectual disability.

Analysis:

According to the Department of Corrections (DOC), there were eight inmates serving under a death sentence as of November 13, 2014. Since January 1, 2008, three offenders have been received onto death row. DOC data indicate that inmates remain on death row for an average of 5.8 years prior to execution

(based on the 37 inmates executed in Virginia since January 1, 2000). Existing data do not contain sufficient detail to identify cases that would be affected by the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. By modifying the definition of “mentally retarded,” the applicability of the death penalty may be decreased. Following the United States Supreme Court’s decision in *Hall v. Florida* in May 2014, Virginia courts must sentence under the standards established by *Hall*. Since the proposal only modifies statutory language to reflect existing precedent set forth by the United States Supreme Court, the proposed legislation is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

Local adult correctional facilities. The proposal will not affect local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal will not affect adult community corrections programs.

Virginia’s sentencing guidelines. Virginia’s sentencing guidelines do not cover completed acts of capital murder. Attempted capital offenses are covered by the guidelines when there is an accompanying conviction for a crime with a maximum penalty of life imprisonment; in those situations, the attempted capital murder is an additional offense that augments the guidelines recommendation. Virginia’s sentencing guidelines currently cover first-degree murder, second-degree murder, and felony murder convictions. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal will not increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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.

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