

## Department of Planning and Budget 2016 Fiscal Impact Statement

**1. Bill Number: HB 390**

House of Origin    ☒ Introduced    ☐ Substitute    ☐ Engrossed  
Second House    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron: Lindsey**

**3. Committee: House Courts of Justice**

**4. Title: Parole eligibility**

**5. Summary:**

The 1994 General Assembly Special Session II abolished parole for offenses committed on or after January 1, 1995. On June 9, 2000, the Virginia Supreme Court ruled that the jury in a noncapital criminal case should be instructed that parole had been abolished in Virginia (*Fishback v. Commonwealth*, 260 Va. 104).

The proposed legislation would make eligible for parole any person still incarcerated who was sentenced by a jury prior to June 9, 2000, for an offense committed on or after January 1, 1995 and the jury was not instructed on the abolition of parole.

**6. Budget Amendment Necessary: Yes. Item 426.**

**7. Fiscal Impact Estimates: Preliminary.**

**7a. Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2017	\$152,608	2.0	General
2018	\$148,208	2.0	General
2019	\$0	0.0	General
2020	\$0	0.0	General
2021	\$0	0.0	General
2022	\$0	0.0	General

**8. Fiscal Implications:**

According to an analysis by the Virginia Criminal Sentencing Commission of data provided by the Department of Corrections (DOC), there are currently 420 inmates incarcerated in state prisons who were convicted by a jury before January 9, 2000 for a noncapital offense committed on or after January 1, 1995. It is not known how many of that number had a jury that was not instructed that parole had been abolished in Virginia. The only way to determine that number would be to examine the trial transcript for each offender.

The Parole Board currently is responsible for reviewing 3,351 offenders annually for release on either discretionary parole (2,897) or geriatric release (454). The number of inmates eligible for geriatric release is projected to increase by more than 20 percent annually over the next five years. If all 420 inmates identified by DOC and the Sentencing Commission qualify under *Fishback* for parole consideration, i.e. their juries were not instructed that parole had been abolished, the current caseload of the Parole Board would be increased by more than 12 percent.

To implement the proposed legislation, the Parole Board would need to examine the trial transcript of each of the 420 identified inmates to determine which juries, if any, had been instructed that parole had been abolished. For each inmate that fully meets the *Fishback* criteria, a parole examiner for the Parole Board must build a case file. Following are some of the elements that are included in a case file of an inmate being considered for parole: details regarding the crimes for which the offender is serving time; information regarding prior crimes with a detailed timeline of any other history of incarceration and/or revocation, if applicable; victim information; police reports; criminal history and history of revocations, if applicable; institutional behavior, work history, education and programming; release plan and community resources available to the offender if released; physical and mental health; and any other relevant information. Often, the information must be obtained from records in several jurisdictions. If no pre-sentence information report was prepared for the case, the parole examiner must gather this information from a multitude of local documents.

Currently, the Parole Board has two full-time parole examiner positions and three part-time positions. To handle the significant increase in the caseload that would result from the proposed legislation and to process these inmates newly eligible for parole within a reasonable time, the agency will need the two additional parole examiners. After two years, the eligible inmates should have been identified and complete files compiled; therefore, the additional positions would not be needed after the 2016-2018 biennium.

Some savings could accrue as a result of the proposed legislation, but they cannot be projected reliably. To the extent that offenders are released as a result of the proposed legislation earlier than had been expected, the Department of Corrections will have additional prison beds. Consequently, it would be able to transfer more state-responsible inmates from jails than had been projected. Because the state reimburses local and regional jails \$12.00 per day for housing state responsible inmates, there would be a savings realized by the state from having fewer state responsible inmates in jails. However, because it is not known how many of the eligible inmates would be released on parole or when, the amount of this potential savings cannot be projected.

## **9. Specific Agency or Political Subdivisions Affected:**

Parole Board  
Department of Corrections

## **10. Technical Amendment Necessary: None.**

**11. Other Comments:** Identical to SB 216.

**Date:** 1/24/2016

**Document:** G:\LEGIS\fis-16\hb390.docx Dick Hall-Sizemore