

Fiscal Impact Review 2016 General Assembly Session

Bill number: HB 794: Death penalty; severe mental illness

Review requested by: Chairman Albo, House Courts of Justice

JLARC Staff Fiscal Estimates

JLARC staff concur with the Fiscal Impact Statements prepared by the Virginia Criminal Sentencing Commission and the Department of Planning and Budget that the fiscal impact of HB 794 is likely to be small. The bill creates a requirement, upon a motion by the defense, for a judge or jury to determine if a defendant in a capital case was severely mentally ill at the time of the offense. If a defendant is determined to be severely mentally ill, the jury or judge would be required to impose a sentence of life imprisonment rather than death.

Over the next biennium, the proposed legislation would likely have no fiscal impact because mental health evaluations are already conducted for defendants in capital cases, and any evaluation of severe mental illness would be combined with existing evaluations. The long-term fiscal impacts would be small, because few offenders are sentenced to death, and the proposed legislation would probably not change the death sentence for at least some of these individuals. Further, for any individuals affected, the long-term costs and savings are expected to largely offset each other.

An explanation of the JLARC staff review is included on the pages that follow.

Authorized for release:



Hal E. Greer, Director

Bill summary: HB 794 establishes a new mental health standard for sentencing in capital crimes: severe mental illness. The proposed legislation requires that a jury, or judge in the case of a bench trial, determine whether the defendant was severely mentally ill at the time of the offense, if the defense makes such a claim. If the jury or judge determines the defendant was severely mentally ill, the bill requires a sentence of life imprisonment rather than death. The defendant must prove severe mental illness by a preponderance of the evidence, which may be based on the evaluation of a mental health expert appointed by the court.

Discussion of fiscal implications: The fiscal impact of HB 794 is determined by the number of people who would receive a life sentence rather than a death sentence, and the additional cost for defendants under a life sentence rather than a death sentence.

Small number of people affected

Over the past 10 years, five people in Virginia have been sentenced to death. The number of individuals who would be determined to be severely mentally ill is unknown, in part because no state has enacted a similar provision. However, even if all individuals who would have received a death sentence were determined to be severely mentally ill, the number would be small, which limits the aggregate fiscal impact.

Virginia law already allows a judge or jury to impose life imprisonment rather than death based on the defendant's mental condition at the time the offense was committed (§ 19.2-264.3:1). The proposed legislation would result in a different outcome from current law only if a defendant's mental condition was not a sufficient mitigating factor to impose a life rather than a death sentence, but the defendant was nevertheless determined to be severely mentally ill.

No costs during the first two years

The proposed legislation would require a mental health evaluation for defendants in capital cases, but this is unlikely to have a fiscal impact because any evaluation of severe mental illness would be combined with mental health evaluations already done under current law. Under current law, the court is required to appoint a mental health expert to evaluate sanity, competency to stand trial and, on request of the defense, to evaluate the defendant's mental condition at the time of the offense as a mitigating circumstance during sentencing, (§§19.2-169.5, 19.2-169.1, and 19.2-264.3:1). HB 794 would allow the evaluation of severe mental illness to be combined with these existing evaluations.

Savings during the first 10 years

If the proposed legislation caused a defendant to receive a life sentence rather than death, there would be a cost savings during the first ten years after sentencing due to avoiding the costs of death penalty appeals. According to the Virginia Attorney General's office, the prosecution costs for death penalty appeals average about \$300,000 lifetime per defendant. The defense costs for death penalty appeals may be higher and, in most capital cases, the court (and therefore the state) bears the cost of the defense. Some studies have estimated the total cost of the death penalty appeals process at close to \$1 million.

The proposed legislation would also save the costs of execution. A 2014 study by the Idaho Joint Legislative Oversight Committee estimated the average cost of an execution at \$50,000.

Cost increases in the long run

If the proposed legislation caused a defendant to receive a life sentence rather than death, there would be costs related to the additional years in prison. The average additional time in prison may be roughly 30 years, assuming an average stay on death row of 10 years and an average stay in prison for a life sentence without parole of 40 years. (The seven inmates currently on death row in Virginia have been on death row for an average of 9.5 years and were about 32 years old at the time of sentencing.)

The average annual cost per offender in state prison is about \$30,000, according to the Department of Corrections. Therefore, the average cost for 30 additional years in prison could be close to \$1 million per offender. This increased cost is roughly similar in magnitude to the savings from avoiding a death penalty appeal, so the net fiscal impact per offender would be small.

Budget amendment necessary? A budget amendment for the 2016-18 biennium is not necessary. If enacted, HB 794 would probably change a death sentence to life imprisonment for fewer than one person per year. Further, the increased cost for any offender affected would not materialize for more than a decade, and would be largely offset by savings from avoided death penalty appeals.

Agencies affected: Department of Corrections, Attorney General's Office, Circuit Courts

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