

Department of Planning and Budget 2016 Fiscal Impact Statement

1. Bill Number: SB 223

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: McEachin

3. Committee: Senate Courts of Justice

4. Title: New Sentencing Hearing

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 provide the opportunity for a new resentencing hearing to 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. Any inmate who satisfied that criteria could petition the Virginia Court of Appeals for a new resentencing hearing. The Court of Appeals, upon receipt of the petition, would direct the circuit court in which the offender was convicted to empanel a new jury for the resentencing proceeding. If the attorney for the Commonwealth of the jurisdiction agreed, the offender could waive his right to a jury resentencing and allow the court to fix punishment. In either case, the new sentence could not exceed the original sentence.

6. Budget Amendment Necessary: No. See Item 8.

7. Fiscal Impact Estimates: Indeterminate. See Item 8.

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.

There would be costs associated with implementing the proposed legislation, although it is not feasible at this time to project the amount of costs or whether they could be absorbed

by the affected agencies within their current resources. Some of the areas or agencies in which costs would be incurred are:

- Certification of eligibility—One of the *Fishback* criteria is that the original sentencing jury was not instructed that parole had been abolished. That information is obtainable only from the court transcript of the proceedings of each trial. The proposed legislation does not make it clear as to who would be responsible for gathering this information that the Court of Appeals would need before ordering a resentencing proceeding.
- Transporting and housing offender—An inmate entitled to a resentencing proceeding would need to be transported from the DOC prison to the local and regional jail that serves the court in which the proceeding would be held. In most cases, it is the responsibility of the sheriffs to transport inmates from prisons to jails for court proceedings. The inmate would be housed in the jail while the resentencing proceedings were taking place, resulting in costs for the jail and the state Compensation Board, which would be required to reimburse the jail \$12 per day for holding him.
- Defense costs—The offender would be entitled to have an attorney to represent him at the resentencing proceeding. If there were no public defender's office in the jurisdiction or if the office could not take the case, an attorney would have to be appointed for the offender and paid out of the state's Criminal Fund, assuming the offender does not retain private counsel.

9. Specific Agency or Political Subdivisions Affected:

Department of Corrections
Virginia Court of Appeals
Office of the Executive Secretary of the Supreme Court
Various circuit courts
Various attorneys for the Commonwealth
Indigent Defense Commission
Compensation Board
Various local and regional jails

10. Technical Amendment Necessary: None.

11. Other Comments: None.

Date: 1/27/2016

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