

2009 SPECIAL SESSION I

INTRODUCED

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SENATE JOINT RESOLUTION NO. 5001

Offered August 19, 2009

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Directing the Virginia State Crime Commission to study the impacts of the holding of Melendez-Diaz v. Massachusetts on criminal prosecutions in the Commonwealth. Report.

Patron—Reynolds

Referred to Committee on Rules

WHEREAS, in Melendez-Diaz v. Massachusetts, 557 U.S. (2009), the United States Supreme Court held that if forensic analysts' affidavits "are functionally identical to live, in-court testimony, doing 'precisely what a witness does on direct examination,'" then "the analysts' affidavits [are] testimonial statements" and defendants are "entitled to 'be confronted with' the analysts at trial"; and

WHEREAS, the dissent in Melendez-Diaz v. Massachusetts recognized that any such forensic analyst "will not always make it to the courthouse in time. He or she may be ill; may be out of the country; may be unable to travel because of inclement weather; or may at that very moment be waiting outside some other courtroom for another defendant to exercise" his Sixth Amendment Confrontation Clause right recognized by the Court in Melendez-Diaz v. Massachusetts; and

WHEREAS, authorizing a court to continue a criminal proceeding to secure a defendant's federal constitutional right to "be confronted with" forensic analysts who are "'witnesses' for purposes of the Sixth Amendment" would likely require statutory amendment to the Commonwealth's statutory framework that guarantees defendants a right to a speedy trial; and

WHEREAS, the dissent in Melendez-Diaz v. Massachusetts concluded that the majority's holding "threatens to disrupt forensic investigations across the country and to put prosecutions nationwide at risk of dismissal based on erratic, all-too-frequent instances when a particular laboratory technician . . . simply does not or cannot appear"; and

WHEREAS, the Associated Press reports that "Department of Forensic Science officials told" the Forensic Science Board on August 12, 2009, that "Virginia's backlog of forensic science cases could skyrocket as examiners spend a lot more time in court because of a recent U.S. Supreme Court decision"; and

WHEREAS, the dissent in Melendez-Diaz v. Massachusetts further concluded that "by requiring analysts also to appear in the far greater number of cases where defendants do not dispute the analyst's result, the Court imposes enormous costs on the administration of justice"; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission be directed to study the impacts of the holding of Melendez-Diaz v. Massachusetts on criminal prosecutions in the Commonwealth.

In conducting its study, the Virginia State Crime Commission shall examine the legal and fiscal impacts of any bill passed during the 2009 Special Session I of the General Assembly that becomes law that both (i) authorizes a court to continue a criminal proceeding to secure a defendant's federal constitutional right to "be confronted with" forensic analysts who are "'witnesses' for purposes of the Sixth Amendment" and (ii) amends the Commonwealth's statutory framework that guarantees defendants a right to a speedy trial.

Moreover, the Virginia State Crime Commission shall examine the legal, fiscal, and practical feasibility of the use of two-way video conferencing to receive testimony at a criminal trial or hearing of any person who (a) performs an analysis or examination pursuant to § 19.2-187 of the Code of Virginia and whose testimony may be required pursuant to § 19.2-187.1 of the Code of Virginia or (b) executes an affidavit pursuant to § 9.1-907 of the Code of Virginia and whose testimony may be required pursuant to § 18.2-472.1 of the Code of Virginia.

Furthermore, the Virginia State Crime Commission shall, if the Commission deems necessary, examine (1) any other issue relating to the holding of Melendez-Diaz v. Massachusetts on criminal prosecutions in the Commonwealth and (2) any bill passed, in response to such holding, during the 2009 Special Session I of the General Assembly that becomes law.

Technical assistance shall be provided to the Virginia State Crime Commission by the Office of the Executive Secretary of the Supreme Court of Virginia. All agencies of the Commonwealth shall provide assistance to the Virginia State Crime Commission for this study, upon request.

The Virginia State Crime Commission shall complete its meetings by November 30, 2009, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2010 Regular Session of the General

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59 Assembly. The executive summary shall state whether the Virginia State Crime Commission intends to
60 submit to the General Assembly and the Governor a report of its findings and recommendations for
61 publication as a House or Senate document. The executive summary and report shall be submitted as
62 provided in the procedures of the Division of Legislative Automated Systems for the processing of
63 legislative documents and reports and shall be posted on the General Assembly's website.