

**Department of Planning and Budget
2003 Fiscal Impact Statement**

1. Bill Number: SB1239

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

2. Patron: Norment

3. Committee: House Courts of Justice

4. Title: Capital Murder

5. Summary/Purpose:

Virginia law permits the execution of mentally retarded persons convicted of capital offenses. The U.S. Supreme Court has declared that policy to be in violation of the Eighth Amendment to the U.S. Constitution. Accordingly the proposed legislation would prohibit the execution of mentally retarded persons, including those already convicted and given the death penalty.

The bill defines mental retardation and establishes procedures for determining whether a person is retarded. If a person is unable to pay for the expert evaluations needed to support his contention in court that he is retarded, the bill would require that the court appoint one or more mental health experts to assist the defense in the preparation and presentation of information concerning the defendant's mental retardation. If a capital defendant serves notice that he intends to present evidence that he is mentally retarded, the Commonwealth's attorney may also have experts appointed by the court to evaluate the defendant.

6. Fiscal Impact: See Item No. 8.

7. Budget amendment necessary: None.

8. Fiscal implications:

Because any one currently on death row who exhibited signs of retardation would be likely to remain on death row for more than six years while his case was being appealed under the current law, the Virginia Criminal Sentencing Commission has determined, pursuant to § 19.1-4 of the Code of Virginia, has determined that the proposed legislation will have no impact on state -responsible (prison) bedspace.

The funds needed to pay for the experts appointed by the court for both the prosecution and the defense to evaluate whether a defendant is mentally retarded would come from the Criminal Fund, which is supported by an appropriation from the general fund. Current law authorizes the Criminal Fund to be used to hire experts to evaluate the mental capabilities of defendants. There may be some additional expenses for mental retardation evaluations resulting from this bill, but such increases are expected to be insignificant.

9. Specific agency or political subdivisions affected:

Supreme Court
Circuit court judges
Commonwealth's attorneys
Department of Corrections

10. Technical amendment necessary: None.

11. Other comments: None.

Date: 02/13/03/rwh

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cc:Secretary of Public Safety