

# Correcting the Injustice of Five Years of Unfair Jury Trials (HB \_\_\_ and SB\_\_ )

## SUGGESTED LANGUAGE:

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### Be it enacted by the General Assembly of Virginia

Whereas in 1994 the General Assembly passed laws abolishing parole for all persons convicted of felonies committed on or after January 1, 1995, allowing only for geriatric release for certain class of offenders over the age of sixty or sixty-five;

Whereas at the time the law came into effect in 1995 the court rules at the time prohibited judges from instructing a jury in non-capital cases that the defendant would not be entitled to parole if sentenced to a term of incarceration, even in cases where the jury requested to know whether the defendant would be entitled to parole;

Whereas as the result juries that sentenced defendant in the months and years following abolition of parole were not instructed by judges that parole had been abolished. Consequently, juries across Virginia imposed lengthy sentences under the erroneous impression that only a fraction of the sentence would be served by the defendant;

Whereas in June 2000, in the case of Fishback v. Commonwealth, 260 Va. 104, 532 S.E.2d 629 (2000), the Virginia Supreme Court ruled that judges must instruct juries in all non-capital cases that parole has been abolished; and in reaching its decision, the Court state that “(a) jury should not be required to perform (its) critical and difficult responsibility without the benefit of all significant and appropriate information that would avoid the necessity that it speculate or act upon misconceptions concerning the effect of the decision;”

Whereas the Court mad its Fishback decision only prospective and not retroactive; thus denying relief to many defendants who were convicted and sentenced by a jury that was not instructed that parole had been abolished and who consequently did not receive a fair trial.

Therefore, be it resolved that:

- (1) The Fishback decision and the legal principles underlying its decision be made retroactive to all presently incarcerated persons convicted and sentence by a jury prior to the Fishback decision;
- (2) All presently incarcerated persons convicted and sentenced by a jury on or after January 1, 1995, and prior to the Fishback decision be afforded a new sentencing by a properly instructed jury and afforded the opportunity to negotiate a guilty plea to a reduced sentence.

**PURPOSE:**

The purpose of the proposed bill is to correct a grave injustice that remains uncorrected. Many of the men and women sentenced by juries prior to Fishback remain imprisoned due to the unusually long sentences imposed by the uninstructed jury. This bill will afford them the opportunity to be sentenced by a properly instructed jury or an opportunity to negotiate a reduced sentence.

**BUDGET CONSIDERATIONS:**

The proposed bill would decrease the amount of time served in prison by many inmates; therefore it would result in savings to the Commonwealth of Virginia.

Resource Information Help for the Disadvantaged (RIHD)  
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