

**REPORT OF THE  
VIRGINIA STATE CRIME COMMISSION**

**References in the *Code of Virginia*  
to “Feebleminded”**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**REPORT DOCUMENT NO. 279**

**COMMONWEALTH OF VIRGINIA  
RICHMOND**

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## **MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION**

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Thomas K. Norment, Jr.

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The Honorable William G. Petty

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The Honorable Jerry W. Kilgore

### **Virginia State Crime Commission Staff**

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## TABLE OF CONTENTS

<b>I.</b>	<b>Authority for Study</b>	<b>1</b>
<b>II.</b>	<b>Executive Summary</b>	<b>1</b>
<b>III.</b>	<b>Methodology</b>	<b>1</b>
<b>IV.</b>	<b>Background</b>	<b>2</b>
<b>V.</b>	<b>Conclusion and Recommendations</b>	<b>3</b>

### List of Attachments

*Attachment A: Letter and draft legislation from the Virginia Code Commission*

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## **I. Authority for Study**

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The *Code of Virginia*, § 30-156, authorizes the Virginia State Crime Commission (Crime Commission) to study, report, and make recommendations “on all areas of public safety and protection.” Additionally, the Crime Commission is to study “compensation of persons in law enforcement and related fields” and to study “trial and punishment of criminal offenders.” Section 30-158(3) empowers the Crime Commission to “conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156. . . and formulate its recommendations to the Governor and the General Assembly.”

Pursuant to a letter request from the Virginia Code Commission (Code Commission), Crime Commission staff conducted a study of the use of the term “feble-minded” in the *Code of Virginia*.

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## **II. Executive Summary**

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The *Code of Virginia* § 30-151 requires the Code Commission to continuously review and identify obsolete provisions in the *Code of Virginia* and annually make recommendations to the General Assembly through legislation. Pursuant to this directive, on December 29, 2004, the Code Commission sent a letter requesting the Crime Commission to examine the Code Commission’s draft legislation removing the last remaining references in the *Code of Virginia* to the term “feble-minded.”<sup>1</sup> Because the remaining references to “feble-minded” involve the prohibition of putting on trial a defendant in a criminal case if he or she is mentally incompetent, before any legislation was introduced, the Code Commission decided to have the Crime Commission review this legislation and advise how best to remove the term “feble-minded” from the text in these sections.

After conducting its examination, the Crime Commission made the following recommendation regarding the use of the term “feble-minded” in the *Code of Virginia*:

### Recommendation

If it is the determination of the General Assembly that the term “feble-minded” is obsolete, it should be replaced with the term “mentally incompetent.”

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## **III. Methodology**

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To conduct this analysis, staff reviewed the *Code of Virginia* and identified references to the term “feble-minded.” Staff also analyzed the Virginia Code Commission’s draft legislation and the feasibility of replacing the term “feble-minded” with the term “mentally retarded.” Finally, staff examined alternatives to the terms

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<sup>1</sup> See Attachment A.

“feeble-minded” and “mentally retarded,” and identified any constitutional issues that could arise by amending the current statutory language.

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## IV. Background

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The dictionary defines “feeble-minded” as “mentally deficient; subnormal in intelligence.”<sup>2</sup> With respect to Virginia law, the term currently occurs in only two statutes, §§ 19.2-167 and 19.2-180, both dealing with mentally incompetent defendants.<sup>3</sup> Specifically, § 19.2-167 states that “no person shall, while he is insane or feeble-minded, be tried for a criminal offense.” Section 19.2-180 states that:

“When a prisoner whose trial or sentence was suspended by reason of his being found to be insane or feeble-minded, has been found to be mentally competent and is brought from a hospital and committed to jail, if already convicted, he shall be sentenced, and if not, the court shall proceed to try him as if no delay had occurred on account of his insanity or feeble-mindedness.”

In an effort to update the Code, the Virginia Code Commission suggested replacing the word “feeble-minded” in these statutes with the phrase: “adjudicated legally incompetent by a circuit court or other constituted authority because of mental retardation as defined in § 37.1-1.”<sup>4</sup> Specifically, the Code defines “Mental retardation” as:

“a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.”<sup>5</sup>

The term “feeble-minded,” in the context of the two criminal procedure statutes, clearly refers to a defendant who is not competent to stand trial. As such, the proposed substitution would be unconstitutional. The United States Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law.<sup>6</sup> This

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<sup>2</sup> The American Heritage Dictionary of the English Language, Fourth Edition, Houghton Mifflin Company Boston New York 2000.

<sup>3</sup> The draft legislation from the Code Commission includes amendments to the *Code of Virginia* § 33.1-234 that would remove the term “feeble-minded” from the statute. This statute, however, was amended during the 2005 Session of the Virginia General Assembly and the term “feeble-minded” was effectively removed.

<sup>4</sup> See attachment A. It should be noted that since the origination of this study, the *Code of Virginia* § 37.1-1 was repealed effective October 1, 2005. Currently the definition of “mental retardation” is codified in *Code of Virginia* § 37.2-100.

<sup>5</sup> Va. Code Ann. § 37.2-100 (2006).

<sup>6</sup> U.S. Const. amend. XIV, § 1.

guarantee has long been interpreted to prohibit the criminal prosecution of a defendant who is not competent to stand trial.<sup>7</sup> Due process is denied if a person lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense, and therefore may not be subjected to a trial.<sup>8</sup> Because not all people who are incompetent to stand trial are mentally retarded, as that term is defined in § 37.2-100, the language proposed by the Code Commission would not meet constitutional muster.

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## **V. Conclusion and Recommendation**

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If it is the determination of the General Assembly that the term “feble-minded” is outdated, it should not be replaced with the term “mentally retarded” because constitutional issues would arise. In lieu of using “mentally retarded,” the word “feble-minded” should be replaced with “mentally incompetent.”

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<sup>7</sup> Drope v. Missouri, 420 U.S.162 (1975).

<sup>8</sup> *Id.*

# **ATTACHMENT A**

COMMONWEALTH OF VIRGINIA



E.M. MILLER, JR.  
DIRECTOR

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December 29, 2004

*Via Hand Delivery to:*

Ms. Kim Hamilton  
Executive Director  
Virginia Crime Commission

**Re: References in the *Code of Virginia* to "feble-minded"**

Dear Kim:

I am writing as Secretary to the Virginia Code Commission and in accordance with the Commission's directive. At the December meeting of the Commission, the enclosed legislation was considered. The intent of this bill is to clean up the *Code* by removing the last three remaining references to "feble-minded."

Since, however, the sections involve the defense of insanity to criminal culpability, the Commission concluded that the better part of wisdom is to have the Crime Commission review the legislation prior to introduction. Therefore, it would be greatly appreciated if the Crime Commission could examine 19.2-167, 19.2-180 and 33.1-234 during the 2005 interim and provide its comments prior to the 2006 session on how to best remove the term "feble-minded" from the text in these sections. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "E.M. Miller, Jr.", with a long horizontal line extending to the right.

E.M. Miller, Jr.

cc: William Mims, Chairman  
Virginia Code Commission



SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 19.2-167, 19.2-180 and 33.1-234 of the Code of Virginia,  
2 relating persons under a disability.

3 **Be it enacted by the General Assembly of Virginia:**

4 1. That §§ 19.2-167, 19.2-180 and 33.1-234 of the Code of Virginia is amended and  
5 reenacted as follows:

6 § 19.2-167. Accused not to be tried while insane or mentally retarded.

7 No person shall, while he is insane or ~~feeble-minded~~ adjudicated legally incompetent by  
8 a circuit court or other constituted authority because of mental retardation as defined in § 37.1-  
9 1, be tried for a criminal offense.

10 § 19.2-180. Sentence or trial of prisoner when restored to sanity.

11 When a prisoner whose trial or sentence was suspended by reason of his being found  
12 to be insane or ~~feeble-minded~~ adjudicated legally incompetent by a circuit court or other  
13 constituted authority because of mental retardation as defined in § 37.1-1, has been found to  
14 be mentally competent and is brought from a hospital and committed to jail, if already  
15 convicted, he shall be sentenced, and if not, the court shall proceed to try him as if no delay  
16 had occurred on account of his insanity or ~~feeble-mindedness~~ mental retardation.

17 § 33.1-234. Guardian ad litem for persons under disability.

18 If any such owner or proprietor be an infant, insane or ~~feeble-minded~~ adjudicated legally  
19 incompetent by a circuit court or other constituted authority because of mental retardation as  
20 defined in § 37.1-1, the circuit court of the county, or the judge thereof in vacation, shall, at the  
21 time the clerk shall issue such process, or as soon thereafter as practicable, upon the court's  
22 or judge's own motion, or upon the suggestion of any party in interest, appoint for such person  
23 a guardian ad litem, who shall faithfully represent the interest of the infant, insane or

## SUMMARY

**Persons under disability.** Removes references to the term "feble-minded" in the Code of Virginia and replaces it with adjudication of mental retardation, thereby conforming the Code to modern-day usage.

§ 19.2-167. Accused not to be tried while insane or feebleminded.

No person shall, while he is insane or ~~feebleminded~~ *mentally incompetent*, be tried for a criminal offense.

§ 19.2-180. Sentence or trial of prisoner when restored to sanity.

When a prisoner whose trial or sentence was suspended by reason of his being found to be insane or ~~feebleminded~~ *mentally incompetent*, has been found to be mentally competent and is brought from a hospital and committed to jail, if already convicted, he shall be sentenced, and if not, the court shall proceed to try him as if no delay had occurred on account of his insanity or feeble-mindedness.

§ 33.1-234. (Effective October 1, 2005) Guardian ad litem for persons under disability.

If any such owner or proprietor be a person under a disability as defined in § 8.01-2, the circuit court of the county, or the judge thereof in vacation, shall, at the time the clerk shall issue such process, or as soon thereafter as practicable, upon the court's or judge's own motion, or upon the suggestion of any party in interest, appoint for such person a guardian ad litem, who shall faithfully represent the interest of the person under a disability and whose fees shall be fixed by the court or judge making the appointment.