

Department of Planning and Budget 2003 Fiscal Impact Statement

1. Bill Number: HB1612

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

2. Patron: Darner

3. Committee: Courts of Justice

4. Title: Juvenile not guilty by reason of insanity.

5. Summary/Purpose: This bill recognizes the finding of "not guilty by reason of insanity" (NGRI) for a child charged with a delinquent act in juvenile court proceedings. The bill closely parallels the adult statute on not guilty by reason of insanity. If the court finds a child not guilty by reason of insanity, the court shall order two evaluations. During a 45-day period for evaluation and development of a services plan, the juvenile may be hospitalized in a Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) facility. Pursuant to § 16.1-277.6, upon receipt of the evaluations and risk assessments, the court shall order the community policy and management team to develop an individual family services plan. Upon receipt of the individual family services plan, the court has three options for disposition: (a) if the juvenile meets commitment criteria, commitment pursuant to § 16.1-345 et seq.; (b) if the juvenile poses an unreasonable risk to the safety of the community, placement in a secure residential treatment facility; or (c) if the child does not pose a risk, the court shall enter a disposition authorized for children in need of services under §§ 16.1-278.4 and 16.1-286. Pursuant to § 16.1-277.7, after the initial finding of NGRI, the bill requires the court to hold a formal hearing each 120 days for the first year, and every 180 days thereafter. The juvenile must be present at each hearing, and must be represented by counsel. The agency is required to report to the General Assembly by December 1, 2003 and by December 1 of each of the five years following implementation of the law.

This bill is a recommendation of the Virginia Bar Association, which was requested by the General Assembly (see HJR 680, 1999) to review this area of the law. See also *Commonwealth v. Chantman*, 30 Va. App. 593, 601, 518 S.E.2d 847, 851 (1999) rev'd Virginia Supreme Court, November 3, 2000, Record No. 992706, where the Supreme Court held that the insanity defense is not available to juveniles absent specific statutory authority.

6. Fiscal Impact Estimates are: Tentative.

6a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2003-04	\$924,337	-	GF
2004-05	\$1,762,464	-	GF
2005-06	\$4,816,013	-	GF

7. Budget amendment necessary: Yes, Item 331, program 440, subprogram 11.

- 8. Fiscal implications:** The projected fiscal impact of this bill includes tentative estimates of the costs of services and initial and on-going training in implementing requirements of this legislation.

Costs of Services: A survey of other states provided data indicating that two to three juveniles would be found not guilty by reason of insanity each year within the first and second years following implementation. After that, it is possible that up to ten juveniles per year could be found NGRI.

This legislation provides that the courts “shall impose the least restrictive alternative disposition” for these juveniles. It is anticipated that for each of the first two years, two of three juveniles found NGRI could have services provided in the community or in a minimum-security environment and the third juvenile would require medium or maximum security environment. In the third and ensuing years, it is estimated that two to three of the ten would require medium or maximum security environment.

The agency’s Commonwealth Center for Children and Adolescents in Staunton (CCCA) and Southwestern Virginia Mental Health Institute (SWVMHI) adolescent unit in Marion are currently being studied by the Department of Juvenile Justice to determine if they meet minimum-security requirements. Community provision of services in a secure environment appear to be limited, as only one of the providers which responded to DMHMRSAS’s August 2002 request for information (RFI) to determine if services in a secure environment were available in the community indicated that it could provide both inpatient psychiatric services and residential treatment services for juveniles aged 13 through 17 years old in a minimum-security environment. This provider excluded the age group of 8 – 12 years. It is also being evaluated to determine if minimum security requirements would be met. It is possible, therefore, that the only option available for provision of services for the 8 – 12 age group who could be managed in a minimum security environment would be CCCA.

For the first two years, if the two (cumulative total of four) juveniles found NGRI would need in-patient psychiatric services in a minimum security environment, then they could be served within the DMHMRSAS facilities utilizing existing staff resources, if these facilities meet minimum-security requirements. DMHMRSAS facilities do not offer residential treatment services and it is possible that residential treatment or in-patient psychiatric services would be required in a community setting. If that is the case, and the provider who responded to the RFI meets the minimum security requirements, then services would need to be contracted out to a community provider. Based on the RFI data, the estimated cost per bed day ranges from \$620.00 per bed day for residential treatment services to \$750 per bed day for inpatient hospitalization. As there are currently neither public nor private facilities in Virginia that can provide services for juveniles requiring a medium or maximum security environment, these juveniles would need to be placed in an out-of-state facility. For the first year, it is estimated that these costs would be \$682 (residential) to \$825 (inpatient hospitalization) per bed day for medium/maximum-security. Community provider costs are based on the first year as FY 2004 and assume these services would be required for 365 days. After the first year, community provider costs could increase by 5% each year. Depending on the type of services needed (residential treatment or inpatient hospitalization) and level of security, preliminary estimates for first year contract costs range from \$701,530 to \$796,430. By the

third year, these costs are projected at \$4,091,730 to \$4,719,494, due to the increased use of the NGR defense.

If the court requires a juvenile to be placed in a medium or maximum security facility out of state, transportation costs would have to be included for the juvenile and two security escorts to travel (a) to the facility, (b) from the facility to the court and back for hearing every 120 days for the first year and every 180 days for ensuing years; (c) from the facility back to the community when the court permitted the juvenile to be placed in a less secure environment, or when the court relinquished jurisdiction. Estimated costs for the first year are \$3,407, \$5,961 for year two, and \$12,519 for the third year.

These projected costs do not include findings from security audits now being conducted, which may result in higher contract costs. Data from these security audits will determine if the minimum-security requirements are met within the DMHMRSAS facilities and by the community provider. Although no estimate is available at this time, it is possible that additional funds would be needed for security enhancements in DMHMRSAS facilities and in community provider facilities to meet minimum security requirements, including up front costs for security hardware and equipment, additional security staff, and ongoing staff training.

By year three, if the population of juveniles found NGR increases by 10 per year, an alternative to contracting within the community is feasible. Additional, extensive study is needed to determine the costs for DMHMRSAS facilities for building and/or renovating existing unit(s), staffing, and support services for provision of services. Also, requirements for medium/maximum secure environments would need to be factored in. Data is not available at this time for a cost projection of this alternative.

Training/Implementation Costs: Training and monitoring activities are also needed to ensure successful implementation of this legislation. Costs of these activities are projected at \$124,500 in FY 2004 and \$84,000 in FY 2005 and ongoing. These funds are needed for several one-time training events in FY 2004 for existing evaluators as well as additional evaluators who will be conducting juvenile evaluations. Ongoing training events, beginning in FY 2004 are also needed. It is anticipated that start-up activities for monitoring, consultation and administrative support for implementation of this legislation could be handled by existing staff.

The bill has no fiscal impact on the Office of Comprehensive Services beyond what is already required to fund. It does not create a new population for the agency. However, from a local government perspective, there may be additional cost, as more children will go through the Family Assessment and Planning Team (FAPT) process. Since these children may (in all likelihood) have elevated service needs, plan development could be extensive and time consuming.

- 9. Specific agency or political subdivisions affected:** Department of Mental Health, Mental Retardation and Substance Abuse Services, Community Services Boards, Office of Comprehensive Services.

10. Technical amendment necessary: No.

11. Other comments: None.

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cc:Secretary of Health and Human Resources