

Department of Planning and Budget

2010 Fiscal Impact Statement

1. Bill Number: HB 1394

House of Origin	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Cleaveland

3. Committee: Appropriations

4. Title: Appointment of attorney by the court

5. Summary:

Based on prior rulings by the U.S. Supreme Court, defendants who could be incarcerated if found guilty of a crime must be provided an attorney by the state if they cannot afford one. Accordingly, Virginia state law provides for the appointment of a attorney paid for by the state for defendants who are indigent. However, the current statute goes on to provide that, if the court states in writing, either at the request of the Commonwealth's attorney or on its own motion, that a sentence of incarceration will not be imposed in a case if the defendant is found guilty, the court may try the case without appointing an attorney and, in such an instance, shall not impose a sentence of incarceration.

The proposed legislation modifies this latter provision to state that, in any misdemeanor case or class of cases in which incarceration may be imposed, but is not mandatory, the prosecuting attorney shall advise the court prior to the appointment of an attorney for the defendant whether he will seek a sentence of incarceration if the defendant is found guilty. If the prosecuting attorney advises the court that he waives the option of the imposition of a sentence of incarceration, the proposed legislation provides that the court may try the case without appointing an attorney, and in such cases no sentence of incarceration shall be imposed, as is provided in the current law.

The legislation would expire July 1, 2013.

6. Fiscal Impact Estimates: Indeterminate. See Item 8.

7. Budget Amendment Necessary: None.

8. Fiscal Implications:

The Commonwealth spent \$10.2 million in FY 2009 to compensate court-appointed attorneys in misdemeanor cases. Judges currently have the discretion, at the request of the Commonwealth's attorney not to appoint an attorney if there is not going to be a sentence of incarceration if the defendant is found guilty. It is assumed that they have exercised that

discretion, thereby saving the expense of a court-appointed attorney, but there is insufficient data to indicate how often they exercised this option or how much was saved.

The primary change in the proposed bill is the specific authorization of the Commonwealth's attorney to advise the court of "a class of [misdemeanor] cases" in which he is not going to seek incarceration. This change may result in a reduction of misdemeanor cases for which the courts appoint attorneys and, therefore, a reduction in Criminal Fund expenditures. Nevertheless, there seems to be nothing in the proposed legislation that would prohibit a judge from requiring notice in each individual case even if the Commonwealth's attorney filed a list of the "classes of cases" for which he has not going to seek incarceration.

Because the court would still have the ultimate discretion of appointing an attorney, it is not clear that the proposed legislation substantively changes the status quo. Therefore, it is not feasible to project any savings, if any, that would result from the proposed legislation.

9. Specific Agency or Political Subdivisions Affected:

Supreme Court
General district court judges
Commonwealth's attorneys
Local and regional jails

10. Technical Amendment Necessary: None.

11. Other Comments: None.

Date: 3/11/2010 dpb

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