

Department of Planning and Budget 2010 Fiscal Impact Statement

1. Bill Number: SB716

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

2. Patron: Peterson**3. Committee:** Senate Committee for Courts of Justice**4. Title:** Conditions of Release Without Bond**5. Summary:** Provides that no person may be released to a pretrial services agency in lieu of posting a secure bond unless he is determined by a court to be indigent.**6. Fiscal Impact Estimates:** Preliminary (see Item 8)**7. Budget Amendment Necessary:** No

8. Fiscal Implications: Currently, a magistrate can refer a defendant directly to a pretrial services program. Under the proposed legislation, a magistrate will not be able to release a defendant to a pretrial services program in lieu of secured bond. Instead a defendant must remain in jail until a judge determines whether he is indigent and thus qualifies for placement into pretrial services.

Pursuant to Va. Code § 19.2-159, the criteria are established for the determination of indigency and eligibility for appointment of court-appointed counsel or public defender services in all Virginia courts. The following table charts the income levels and household size information taken into consideration in determining indigency.

		HOUSEHOLD SIZE							
		1	2	3	4	5	6	7	8
Pay Periods	WEEKLY (52)	\$ 260	\$ 350	\$ 440	\$ 530	\$ 620	\$ 710	\$ 800	\$ 890
	2 WEEKS (26)	\$ 521	\$ 701	\$ 880	\$ 1,060	\$ 1,240	\$ 1,420	\$ 1,600	\$ 1,779
	2X MONTH (24)	\$ 564	\$ 759	\$ 954	\$ 1,148	\$ 1,343	\$ 1,538	\$ 1,733	\$ 1,928
	MONTHLY (12)	\$ 1,128	\$ 1,518	\$ 1,907	\$ 2,297	\$ 2,687	\$ 3,076	\$ 3,466	\$ 3,855
	ANNUALLY (1)	\$ 13,538	\$ 18,213	\$ 22,888	\$ 27,563	\$ 32,238	\$ 36,913	\$ 41,588	\$ 46,263

*Federal Poverty Guidelines plus 25% (Source: Federal Register / Vol. 74, No. 14/ January 23, 2009/ p. 4199-4201)

(Add \$4,675 For Each Additional Member in Households of More Than Eight.)

*Household Size: includes total number of persons residing in the home that the defendant has financial responsibility for, including the defendant.

According to the Department of Criminal Justice Services (DCJS), there are currently 30 pretrial services agencies investigating defendants held in 40 jails operated by or for 82 of the 134 counties and cities of the Commonwealth of Virginia.

The primary responsibilities of pretrial services agencies in Virginia are to:

1. Provide information in determining the risk to public safety and the assurance of appearance of defendants with a thorough investigation to judicial officers (magistrates and judges) to assist them with bail decisions (release or detain defendants) and,
2. Provide supervision and services to defendants as ordered by a judicial officer.

These programs perform approximately 50,000 pretrial investigations each year that result in approximately 17,900 pretrial referrals. Pretrial supervision is considered a term or condition of bail. The Code of Virginia (§ 19.2-123 A. 1) permits a judicial officer to "[p]lace the person in the custody and supervision of a designated person, organization or pretrial services agency..." The following chart reflects the caseload of pretrial service agencies over the last two years:

Pretrial Information	FY 2008	FY 2009
Investigations	50,444	50,254
Recommendations	42,132	41,490
Accepted by Court	76.8%	74.4%
Placements	18,523	17,903

According to data from the Pretrial and Community Correction Case Management system (PTCC) on January 26, 2010, 89 percent of the defendants currently under pretrial supervision can be classified as indigent (as defined in § 19.2-159 of the *Code of Virginia*). Only 559 of the 5,042 (or 11 percent) of those on pretrial supervision as of January 26, 2010 have an income above the poverty level and would not be classified as indigent. This calculation was done by comparing the reported monthly income and the number of dependants from PTCC for defendants on pretrial supervision to the *Eligibility for Court-Appointed Counsel* Indigency Guidelines released by the Office of the Executive Secretary (table shown above). The number of persons on pretrial supervision on the day the sample was taken is representative of the number of persons on pretrial supervision on any given day.

In FY 2010, \$8,787,424 in state general funds has been awarded to pretrial services programs. This legislation could result in an 11 percent reduction in caseload. An 11 percent reduction in funding is equivalent to \$966,617 per year. However, because at least half of the pretrial services workload is in the pretrial investigation and, because those investigations occur prior to the courts determination of indigency, it is estimated only half of \$966,617, or \$483,309, would constitute potential "real savings."

Furthermore, only about 40 percent of pretrial services agencies complete the financial assessment form which is used to determine the need for counsel. If the form is required to be completed on all defendants investigated, it would likely have a fiscal impact on local pretrial services program budgets based on having to complete about 30,000 additional financial assessments. The fiscal impact on local pretrial service programs is estimated at \$75,000.

The Compensation Board presently reimburses local and regional jails \$8 a day for every inmate housed awaiting court appearance. In FY 2009, 5,860 defendants were placed directly into pretrial services. Each additional day that this group of defendants would stay in a local jail

awaiting determination of indigency would cost the Commonwealth \$46,880. Furthermore, there would likely be defendants who did not meet the indigency requirements but nevertheless could not post bond. Currently, these defendants would be eligible to be placed in pretrial services; however, under the proposed legislation, these defendants could not be placed in pretrial services and would have to remain in jail until their trial. The additional per diem cost to the state resulting from these defendants staying in jail cannot be determined.

Although it is estimated the legislation could create approximately \$400,000 in potential net savings in pretrial services, the potential fiscal impact on jails and state support costs for jails from this legislation cannot be quantified. As noted above, for every day these individuals are kept in jail, the state jail per diem costs would equal \$46,880. Consequently, it is difficult to know if this legislation will have some savings or increase costs to the state when both pretrial services and jail per diems are considered.

9. Specific Agency or Political Subdivisions Affected: Local pre-trial programs and local jails.

10. Technical Amendment Necessary: No

11. Other Comments: Same as HB728

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