

Department of Planning and Budget 2012 Fiscal Impact Statement

1. Bill Number: SB 158

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

2. Patron: Obenshain

3. Committee: House Courts of Justice

4. Title: Admission to bail

5. Summary:

Under current law, for persons charged with specified crimes, a judicial officer, usually a magistrate, shall presume that they are unlikely to appear for trial or they pose a threat to public safety and, thus, deny bail to such persons. This presumption is rebuttable before a judge.

The proposed legislation would prohibit a judicial officer from admitting to bail, that is not set by a judge, a defendant to whom the rebuttable presumption were applicable, without the concurrence of the attorney for the Commonwealth. Furthermore, it would require that any judge, before setting or admitting to bail any person to whom the rebuttable presumption were applicable, give notice and an opportunity to be heard to the attorney for the Commonwealth.

6. Budget Amendment Necessary: No.

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

8. Fiscal Implications:

The proposed legislation could have a fiscal impact on the Commonwealth, but the extent of the impact cannot be determined. The immediate source of the potential impact would be increased per diem payments to local and regional jails for persons being held while awaiting trial.

Currently, many magistrates will decide that defendants appearing before them and subject to the rebuttable presumptions provision have presented sufficient information to overcome, or rebut, the presumption and, as a result, admit them to bail. Under the proposed legislation, they will not be able to make that decision unless the Commonwealth's attorney concurs. If the Commonwealth's attorney does not concur, the defendant will be held in jail until the arraignment. The proposed legislation requires the court to give notice and an opportunity to be heard to the Commonwealth's attorney before a court may admit to bond a

defendant subject to the rebuttal presumption provisions. If the Commonwealth's attorney is not present at the arraignment, there may be a delay, particularly in rural areas, before the Commonwealth's attorney can be given a chance to be heard and the court can consider the request for bond.

The Compensation Board reimburses local and regional jails \$4.00 per day for each defendant being held in jail awaiting trial. There is not sufficient data available to project how many defendants subject to the rebuttable presumption would be released annually to bail by magistrates under current law. To the extent that such defendants are not released on bond due to the Commonwealth's attorney objecting and thus having to wait in jail longer, the proposed legislation would have a direct fiscal impact.

There could be a longer-term, more indirect fiscal impact, as well. If the provisions of the proposed legislation result in a significant increase in the number of defendants awaiting trial in local or regional jail due to their inability to make bond, there could be enough pressure on jail bed space to lead to a need to expand some jails. For regional jails, the state reimburses localities for half the cost of jail expansion; for local jails, the reimbursement rate is 25 percent.

9. Specific Agency or Political Subdivisions Affected:

Compensation Board
Magistrates
District and circuit court judges
Local and regional jails

10. Technical Amendment Necessary: None.

11. Other Comments: None.

Date: 2/27/2012

Document: G:\LEGIS\fis-12\SB158e.doc Dick Hall-Sizemore