

## Department of Planning and Budget 2018 Fiscal Impact Statement

**1. Bill Number: HB53**

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

**2. Patron:**      Hope

**3. Committee:** Courts of Justice

**4. Title:** Persons acquitted by reason of insanity; evaluation

**5. Summary:** Provides that a person acquitted of a crime by reason of insanity may, based on an order by the court and the determination of the Commissioner of the Department of Behavioral Health and Developmental Services (DBHDS), be evaluated for commitment or release with or without conditions on an outpatient basis or be confined to a hospital for the purpose of such evaluation. Under current law, the person acquitted must be confined to a hospital for the purpose of such evaluation. The bill provides that the Commissioner of Behavioral Health and Developmental Services determines whether such evaluations are conducted on an outpatient basis or whether the person acquitted will be confined to a hospital for the purpose of the evaluation.

**6. Budget Amendment Necessary:** No

**7. Fiscal Impact Estimates:** Indeterminate but likely negligible

**8. Fiscal Implications:** The proposed legislation allows for temporary custody evaluations to be performed on an outpatient basis. Current language requires such evaluations to be performed within the confines of a hospital. The Commonwealth would still be responsible for the cost of the temporary custody evaluation when performed on an outpatient basis.

Currently, when an individual is found Not Guilty by Reason of Insanity pursuant to §19.2-182.2 the Code requires that they be “placed in the temporary custody of the Commissioner”. The Office of the Attorney General has provided guidance that the wording “temporary custody” means the individual was to be admitted for inpatient care. Individuals in “temporary custody” remain in a DBHDS facility anywhere from 60 to 120 days (or longer) during which time they undergo evaluations conducted by Commissioner appointed evaluators. The average hospital stay for an inpatient temporary custody evaluation is 100 days.

Based on cases in previous years, DBHDS program staff estimate that approximately 10 cases per year would benefit from outpatient temporary custody evaluations.

Historically, some courts have ordered the period of temporary custody to be done on an outpatient basis and similarly there have been occasions (i.e. individuals in Department of

Corrections (DOC) custody, individual was pregnant) when DBHDS has opted to perform such evaluations on an outpatient basis. These instances have illustrated that inpatient and outpatient costs are comparable. Specifically, each evaluation, whether inpatient or outpatient, requires at least five separate assessments performed by a combination of psychiatrists and psychologists, and require the same staff resources for the evaluations themselves; however, inpatient evaluations also require that the individual occupy a bed in a state hospital at a cost of an average of \$786 per bed day. If the same evaluation were performed on an outpatient basis and the individual were to visit the state hospital for assessments, a bed would not be required. However, given the current census pressures at state mental health facilities, it's likely that the bed would be occupied by another patient seeking care at the facility and would not result in any measurable savings to the state.

**9. Specific Agency or Political Subdivisions Affected:** Department of Behavioral Health and Developmental Services, Department of Corrections, Courts of Justice, Community Services Boards

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None