

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB259 ER

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

2. Patron: Simon

3. Committee: Passed both houses

4. Title: Unrestorably incompetent defendant; competency report.

5. Summary: This bill provides that in cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition and prior medical or educational records are available to support the diagnosis, a competency report may recommend that the court find the defendant unrestorably incompetent to stand trial. The bill allows the court to proceed with the disposition of the case based on such recommendation in accordance with § 19.2-169.3 (regarding unrestorably incompetent defendants charged with capital murder or sexually violent crimes). Under current law, such defendant is required to undergo treatment to restore his competency before the court can find a defendant unrestorably incompetent to stand trial.

The bill also provides that anyone who is found unrestorably incompetent to stand trial under the bill's provisions is prohibited from purchasing, possessing, or transporting a firearm.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Final. See Item 8 below.

8. Fiscal Implications: This legislation would allow someone whose competency is compromised due to an ongoing and irreversible medical condition to be deemed unrestorably incompetent without receiving treatment to restore competency. The Department of Behavioral Health and Developmental Services (DBHDS) reports that under this provision, fewer individuals would require treatment to restore competency, which may result in savings for the agency.

According to DBHDS, under current law, individuals are either treated on an inpatient basis at a state facility at an average cost of \$56,592 per patient, or on an outpatient basis through a Community Services Board, which is then reimbursed by DBHDS, at an average cost of \$1,000 per patient. In FY 2019, DBHDS reports that the agency provided inpatient competency restoration services to 697 individuals and CSBs provided outpatient competency restoration services to 384 individuals. However, because the final determination of competency is made by a judge, DBHDS does not have data on the number of individuals treated who were eventually found unrestorably incompetent. Therefore, it is not possible to

estimate either the number of individuals who may be affected or the amount of savings that may result from this proposal.

This bill also prohibits anyone who was found incompetent to stand trial and likely to remain so for the foreseeable future and whose case was disposed of in accordance with § 19.2-169.3 from purchasing, possessing, or transporting a firearm. A violation of this provision is punishable as a Class 1 misdemeanor. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

This bill also allows any person who is prohibited from purchasing, possessing or transporting firearms to petition the general district court to restore his right to purchase, possess, or transport a firearm after his release from a training center, or his release as provided by § 19.2-169.3. This provision is not expected to have a fiscal impact on the courts.

9. Specific Agency or Political Subdivisions Affected: Department of Behavioral Health and Developmental Services, local and regional jails, courts

10. Technical Amendment Necessary: None

11. Other Comments: None