

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB738

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

2. Patron: Deeds

3. Committee: Education and Health

4. Title: Observation and treatment; temporary detention.

5. Summary: Clarifies that a person can be subject to a temporary detention order for observation and treatment related to intoxication, upon a finding that (i) probable cause exists to believe the person is incapable of making or communicating an informed decision regarding treatment due to intoxication and (ii) that observation, testing, or treatment is necessary within the next 24 hours to prevent injury, disability, death, or other harm to the individual resulting from such intoxication. The bill also provides for the tolling of an emergency custody order for the period during which the person who is the subject of the emergency custody order is also subject to a temporary detention order for observation and treatment.

6. Budget Amendment Necessary: See Item 8.

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

8. Fiscal Implications: This legislation clarifies that “intoxication” is considered a “mental or physical condition” for the purposes of placing an individual under involuntary temporary detention in a hospital emergency room or other appropriate facility for testing, observation, or treatment, according to § 37.2-1104 of the Code of Virginia. This would allow said individual to be held for up to 24 hours, so long as a licensed physician affirms the condition to the ordering magistrate. If the individual is under an emergency custody order, the 8-hour ECO period would be paused upon execution of the temporary detention order (TDO) for intoxication and resume at the end of the 24-hour testing, observation, and treatment period. An emergency services evaluator would assess the need for a TDO for involuntary psychiatric treatment pursuant to § 37.2-809 after that 24-hour period. The medical TDO process currently exists in Code, but is used sparingly and inconsistently across localities.

Potentially, this legislation could result in cost avoidance to mental health facilities operated by the Department of Behavioral Health and Developmental Services. Based on information provided to a state workgroup on temporary detention orders, as many as 30 percent of the individuals admitted to a DBHDS facility under a TDO are intoxicated. Many of those are released once they are no longer intoxicated because they no longer meet the criteria for involuntary commitment, however for the period of time that they are held, they occupy beds

in state facilities that are at or over capacity. Holding intoxicated individuals in an emergency room for observation for up to 24 hours could reduce admissions to state hospitals and free up bed space. If a TDO screening by a CSB pre-screener is required both before and after the observation period, this potentially could increase cost to CSBs, as existing emergency evaluators would have their caseloads increased or new evaluators would need to be hired.

Additionally, both the Courts and law enforcement have expressed concern about the possible impact on their workload if this clarification increases the number of individuals who are held under a medical TDO or the number of times a magistrate needs to issue orders.

The cost of services provided during the time period for which a person is held under a medical TDO would be the responsibility of an individual's private insurance, Medicaid, or the funds in the Department of Medical Assistance Services (DMAS) dedicated for the medical costs of involuntary mental commitments, if applicable. However, the delay in admission to a mental health facility may provide individuals sufficient time to regain capacity, resulting in fewer traditional TDO admissions associated with a substance abuse diagnosis. DMAS estimates that the bill may have an impact on the number of authorizations and facility admissions, however, any possible savings are not expected to be significant and any fiscal impact would be minimal.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Behavioral Health and Developmental Services, Department of Medical Assistance Services, CSBs, Courts of Justice, local law enforcement.

10. Technical Amendment Necessary: No.

11. Other Comments: None.