

## **Department of Planning and Budget**

### **2021 Fiscal Impact Statement**

**1. Bill Number:** SB1315 S1

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

**2. Patron:**        McClellan

**3. Committee:** Judiciary

**4. Title:**            Criminal proceedings; consideration of mental condition and intellectual and developmental disability

**5. Summary:** Under current law, a judicial officer must consider certain factors in determining, for the purpose of rebuttal of the presumption against bail, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public. These conditions include the physical and mental condition of the person. This bill requires that a diagnosis of an intellectual or developmental disability as defined in § 37.2-100 (defines terms used in Title 37.2 Behavioral Health and Developmental Services) must be considered as part of the mental condition of the person.

Under current law, when a person is tried in circuit court for certain offenses, the court must direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, which is used by the court to determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, and any applicable sentencing guideline worksheets. The bill allows such reports to include any diagnoses of an intellectual or developmental disability as defined in § 37.2-100.

The bill creates § 19.2-271.6, which establishes the admissibility of evidence of a defendant's mental condition and requires notice to the Commonwealth. Under this new section, in any criminal case, evidence concerning the defendant's mental condition at the time of the alleged offense, including expert testimony, must be admitted if such evidence (i) tends to show the defendant did or did not have the specific mental state required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence. Further, if a defendant intends to present expert testimony pursuant to this section, he, or his counsel, is required to give notice in writing to the attorney for the Commonwealth, at least 30 days prior to his trial, of his intention to present such evidence. In the event that such notice is not given, and the person proffers such evidence at his trial as a defense, then the court may in its discretion either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence. The period of any such continuance must not be counted for speedy trial purposes under § 19.2-243 (limitation on prosecution of felony due to lapse of time after finding of probable cause; misdemeanors; exceptions). Nothing in this

section can be construed to affect the requirements for a defense of insanity as established in Chapter 11 (§ 19.2-167 et seq.).

The substitute bill requires that evidence offered by the defendant to establish an underlying mental condition must show that the condition existed at the time of the offense and that the condition satisfies the diagnostic criteria for (a) a mental illness as defined in § 37.2-100, (b) a developmental disability or intellectual disability as defined in § 37.2-100, or (c) autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

The substitute bill also sets deadlines for giving the attorney for the Commonwealth written notice if a defendant intends to introduce evidence of his mental condition at the time of the alleged offense depending on which court will hold the trial. The substitute bill provides that the new section does not affect the requirements for a defense of insanity pursuant to Chapter 11 (§ 19.2-167 et seq.), that nothing in the section permits the introduction of evidence of voluntary intoxication, and that the defendant, when introducing evidence pursuant to this section, must follow all discovery rules as required by law and the Rules of Supreme Court.

Current law establishes qualifications for court-appointed counsel, setting minimum requirements for the hours of mandatory continuing legal education (MCLE)-approved training, which is developed by the Indigent Defense Commission. This bill increases the number of mandatory hours from six to eight and requires that two of these hours cover the representation of individuals with behavioral or mental health issues and individuals with intellectual or developmental disabilities as defined in § 37.2-100.

- 6. Budget Amendment Necessary:** Indeterminate
- 7. Fiscal Impact Estimates:** Preliminary. See line 8 below.
- 8. Fiscal Implications:** The substitute bill would permit evidence offered by the defendant concerning the defendant's mental condition at the time of the alleged offense, including expert testimony that meets the requirements set in the bill. This provision is likely to have a fiscal impact on the Criminal Fund, as the expert witness would be compensated by the Commonwealth in instances where the defendant has been determined to be indigent. However, the number of cases where an indigent defendant would request such expert testimony in accordance with the bill's provisions cannot be known. Therefore, the annual fiscal impact upon the Criminal Fund cannot be determined at this time.

According to the Department of Corrections, this bill is not expected to have a fiscal impact on probation and parole operations. This bill is not expected to have a material fiscal impact on the Indigent Defense Commission or the Board of Bar Examiners. The impact on the Commonwealth's Attorneys cannot be determined at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Department of Corrections, Commonwealth Attorneys, the Indigent Defense Commission, the Board of Bar Examiners, and Public Defender Offices.

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None