

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: SB723S1

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

2. Patron: McClellan

3. Committee: Senate Finance and Appropriations Committee

4. Title: Bail; data collection and reporting standards; report.

5. Summary: The proposed legislation requires the Department of Criminal Justice Services to (i) collect data relating to bail determinations for any person who is held in custody pending trial or hearing for an offense, civil or criminal contempt or otherwise, in every locality; (ii) create a uniform reporting mechanism for criminal justice agencies to submit such data; and (iii) submit an annual report on the data collected to the Governor and the General Assembly, as well as publish the annual report on the Department's website. The bill also provides that the law addressing bail is to be construed so as to give effect to a general presumption in favor of pretrial release. The bill also requires the Department to report to the House Committee for Courts of Justice by January 1, 2021, on the development and application of the uniform reporting mechanisms.

The bill has a delayed effective date of July 1, 2021, for provisions related to the creation of uniform reporting mechanisms and data collection by the Department.

6. Budget Amendment Necessary: Yes. Item 39 and Item 407

7. Fiscal Impact Estimates: Preliminary. See Item #8 below

8. Fiscal Implications: The legislation requires the Department of Criminal Justice Services (DCJS) to create uniform reporting mechanisms for appropriate criminal justice agencies, in every locality to collect data relating to bail determinations made by judicial officers conducting hearings. The collected data must be disaggregated by locality and by individual. In order to maintain anonymity of the individual, localities must use a unique identifier for each individual. At the minimum, the data collected by DCJS must include the following:

- The hearing date of any hearing conducted and the date any individual is admitted to bail;
- Information about the individual, including the individual's year of birth, race, ethnicity, gender, primary language, and residential zip code;
- The determination of the individual's indigency;

- Information related to the individual's charges, including the number of charges; the most serious offense with which the individual is charged; the code section for such offense; the general description of such offense; whether such offense is a felony, misdemeanor, civil infraction, or other type of offense; and the specific classification of any felony or misdemeanor offense;
- If the individual is admitted to bail, information related to the conditions of bail and the bond, including (i) whether the bond was secured or unsecured; (ii) all monetary amounts set on the bond, including amounts set on both secured and unsecured bonds; (iii) any initial nonmonetary conditions of release imposed; (iv) any subsequent modifications; and (v) whether the individual utilized the services of a bail bondsman;
- If the individual is not admitted to bail, the reason for the denial;
- Any outstanding arrest warrants or other bars to release from any other jurisdiction;
- Any revocation of bail due to a violation of such individual's conditions of release, failure to appear for a court hearing, or the commission of a new offense by such individual;
- The date the individual is sentenced to an active term of incarceration and the date such individual begins serving such active term;
- All dates the individual is released or discharged from custody, including release upon satisfaction of the terms of any recognizance, release upon the disposition of any charges, or release upon completion of any active sentence;
- The reason for any release or discharge from custody, including whether the individual posted a bond, was released on a recognizance, or was released under terms of supervision, or whether there was a disposition of the charges that resulted in release of the individual. If the reason for release is due to a court order or a disposition of the charges resulting in release, the data collected must include the specific reason for release, including the nature of the court order or, if there was a conviction, the particular sentence imposed. The data must also include a list of definitions of any terms used by the locality to indicate reasons for release or discharge; and
- The average cost for housing the individual in the local correctional facility, for one night.

Additionally, the proposed legislation has a delayed implementation in order for provisions related to the creation of uniform reporting mechanisms and data collection to be established by DCJS.

Currently, DCJS does not collect the information required by the proposed legislation. DCJS reports that according to a study on pretrial services conducted by the Virginia State Crime Commission, no one entity currently collects and analyzes all of the data elements listed in the proposed legislation. DCJS states that the Office of the Executive Secretary (OES) of the

Supreme Court of Virginia, the court systems, the Compensation Board, the Virginia State Police (VSP), and DCJS itself, each collect various parts of the required data.

To meet the requirements of the proposed legislation, DCJS reports that it would need to develop the means to collect and analyze the mandated data elements from multiple agencies. As a comparison, Based on significantly smaller data-sharing and analytics projects, DCJS estimates that it likely would cost several million dollars to develop the type of data-sharing and analytics solution necessary for such a statewide application as required by this legislation. Additionally, once the application is developed, DCJS anticipates ongoing costs ranging from \$500,000 to \$1,000,000 for annual licensing and data storage.

DCJS also reports that it anticipates the increase in workload at the agency will require two additional full time employees. One position will be required to: (1) define the relevant data sets, (2) coordinate efforts among stakeholders, (3) develop and execute the necessary data sharing agreements and policies to support the project, (4) ensure the accuracy of information on a continual basis, and (5) oversee the implementation of an automated data sharing and analytical platform. Further, DCJ reports that the second position, an IT business analyst, also would be needed to: (1) translate the business requirements, (2) oversee the purchase and configuration of the data-sharing solution, and (3) carry out on-going vendor management activities. DCJS estimates that the cost for these two positions would be a total of \$252,198. This would include \$70,000 in salary for the first full-time position, and \$80,000 salary for the second full-time IT position, while the remaining \$102,198 includes costs for benefits and agency overhead costs.

The Office of the Executive Secretary (OES) of the Supreme Court reports that it currently does not collect the data specified in the proposed legislation, and that doing so may potentially require formatting all existing data fields and the newly required data fields in a manner that currently is not possible within the court system's existing electronic systems. Further, OES states that two different readings of the proposed legislation are possible, each resulting in different potential fiscal impacts. Additionally, OES reports that there are two different ways the court system's electronic systems could be rebuilt to respond to the requirements in the proposed legislation, but each option creates a significant fiscal impact and involves a disruptive level of change to the current operations of the court's electronic systems. Specifically, OES states that the court system's current electronic systems were constructed to facilitate the management of individual court cases. The proposed legislation is premised on the collection of information about individual persons, not the individual cases.

OES reports that a broad reading of the proposed legislation would require the court system to convert its electronic systems from charge-or case-based systems to defendant-or individual-based systems. OES reports that such a change would require a complete, fundamental overhaul to all three existing case management systems and every existing electronic court system that relies upon the infrastructure that is provided. OES reports that the estimated cost of such an overhaul would be well over \$15 million. Additionally, court operations would be severely hampered by a near complete stoppage of all ongoing development and optimization of existing systems. Furthermore, the OES states that such an

overhaul would require multiple years of development, possibly nearing a decade. The OES notes that the estimated figure of \$15 million is only for technical redevelopment, and does not include the cost and time necessary to retrain the staff of every court clerk's office within the Commonwealth.

OES states that based on a more restrictive reading of the proposed legislation, existing systems could be updated to record data elements that are not currently reported, and this information could be conveyed to Executive Branch agencies for compilation in accordance with the provisions in the proposed legislation. The OES states that in such an instance, DCJS would be responsible for grouping cases for a specific individual and assigning the "unique identifier" required by the proposed legislation, as well as performing other established requirements related to reporting the data.

OES reports that in order to fulfill the requirements of the proposed legislation under this narrower interpretation, various developmental enhancements would need to be made to three existing electronic case management systems maintained by OES. These would include: (1) adding up to five fields across six divisions within these systems, five dockets, and 22 forms; (2) editing 43 requirements for existing interfaces with systems and agencies; (3) updating search functions for processing data requests, and; (4) including security mechanisms for data protection. OES estimates that the total cost for development, quality assurance analysis, and training of court personnel related to these system enhancements is approximately \$878,246. Additionally, OES reports that the annual cost for a full-time employee who would be needed to provide support for agencies receiving the data elements, is \$104,818.

According to the Compensation Board, there may be a need to modify their inmate management system, but the cost associated with the modification, if any, cannot be determined at this time. The impact on local law enforcement agencies cannot be determined at this time.

9. Specific Agency or Political Subdivisions Affected: The Department of Criminal Justice Services; the Office of the Executive Secretary of the Supreme Court of Virginia; law enforcement agencies, and the Compensation Board.

10. Technical Amendment Necessary: No.

11. Other Comments: None.