

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: HB 2166

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

2. Patron: Hope

3. Committee: Health, Welfare, & Institutions

4. Title: Involuntary admission; provisions governing involuntary inpatient and mandatory outpatient treatment.

5. Summary: Amends provisions governing involuntary inpatient and mandatory outpatient treatment to (i) revise criteria for entry of a mandatory outpatient treatment order to become effective upon expiration of an order for involuntary inpatient treatment; (ii) eliminate the requirement that a person agree to abide by a mandatory outpatient treatment plan to be eligible for mandatory outpatient treatment, and instead require that the judge or special justice find that the person is able to adhere to a mandatory outpatient treatment plan; (iii) eliminate the role of a treating physician in determining when a person is eligible to transition from inpatient to mandatory outpatient treatment under an order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (iv) increase from 90 to 180 days the length of an order for mandatory outpatient treatment; (v) revise requirements for monitoring of a person's adherence to a mandatory outpatient treatment plan by a community services board; (vi) add a requirement that a community services board be responsible for monitoring a person's adherence to a mandatory outpatient treatment plan report monthly to the court regarding the steps taken to ensure the person does not meet the criteria for an emergency custody order or temporary detention order during the period of mandatory outpatient treatment; (vii) expand the category of persons who may file petitions for various reviews of a mandatory outpatient treatment order or plan; (viii) add a provision for status hearings during the period of mandatory outpatient treatment; and (ix) make other changes to procedures and processes governing mandatory outpatient treatment.

6. Budget Amendment Necessary: No.

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

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021			
2022			GF
2023	\$823,086		GF
2024	\$823,086		GF
2025	\$823,086		GF
2026	\$823,086		GF
2027	\$823,086		GF

- 8. Fiscal Implications:** The engrossed version of this bill delays the effective date of the legislation to July 1, 2022.

Department of Behavioral Health and Developmental Services

This bill makes several changes to the current Mandatory Outpatient Treatment (MOT) Statute. The most financially impactful change is the extension of the maximum period of MOT from 90 days to 180 days.

Previous estimates on the cost of extending the mandatory outpatient treatment period estimated 30 days of mandatory outpatient treatment cost an average of approximately \$3,400. For the purposes of this fiscal impact statement, that is the assumed monthly cost of treatment. While the extension will likely increase the average length of time an individual is subject to an order, and thus increase the total cost of services, the portion of that cost that is the responsibility of the state is indeterminate, as it is dependent on whether an individual has private insurance, is enrolled in Medicaid, or is indigent during the service period.

Currently, between 300 and 350 individuals are ordered to mandatory outpatient treatment per year in Virginia. According to data from the Department of Medical Assistance Services, Medicaid covers approximately 20.3 percent of the total population of Virginia, but in 2020, an average of 44.5 percent of individuals admitted to state hospitals under a TDO had Medicaid coverage. If that figure is applied to the number of individuals under MOT orders, between 134 and 156 individuals would be Medicaid eligible. At a monthly cost of \$3,400, an additional three months of treatment could cost up to \$1.6 million, of which as much as half would be reimbursable by the federal government, depending on the services provided. If the service is not deemed medically necessary by the providers, then the costs would not be Medicaid eligible and would fall to either the individual or the Community Services Boards (CSB).

In addition to the cost of services, this legislation will have some impact on CSBs and staff time. The addition of monthly reports on each MOT patient will require staff resources and may require additional resources. In cases where an examiner must examine an individual seeking a rescission order under this legislation, the cost would be \$75 per evaluation and \$75 for appointed counsel. The cost of these hearings is not reimbursable through Medicaid.

The bill language also allows for the suspension of the MOT period if an ECO, TDO, or involuntary inpatient treatment order is issued on an individual under an MOT order. Currently, the MOT period is rescinded under such circumstances. Individuals whose MOT services would previously cease under these orders will now resume receiving these services once the suspension ends, resulting in additional treatment days and potentially additional costs to CSBs. It is possible that the expansion of services required to be provided by CSBs under STEP-VA may mirror some of the services required under Mandatory Outpatient Treatment orders.

Courts of Justice

This legislation provides that a judge or special justice may schedule periodic status hearings for the purpose of obtaining information regarding the person's progress while a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment remains in effect. The person who is the subject of the order and the community services board responsible for monitoring the person's condition must be provided with notice by the clerk. The person has the right to be represented by counsel at the hearing, and status hearings may be held without counsel present by mutual consent of the parties. During the hearing, the treatment plan may be amended upon mutual agreement of the parties. Contested matters must not be decided during a status hearing, nor can any decision regarding enforcement, rescission, or renewal of the order be entered.

This bill would result in more hearings being held when a person is ordered to undergo mandatory outpatient treatment. In Fiscal Year 2019, there were 24,163 commitment hearings involving special justices in the Commonwealth of Virginia. The number of cases where mandatory outpatient treatment would be ordered cannot be determined, nor can the number of such cases in which a status hearing would be held. However, if one were to assume that in half of these cases a person would be ordered to undergo mandatory outpatient treatment, and in half of those cases in which mandatory outpatient treatment was ordered, a status hearing would be held, there would be 6,041 status hearings. Each status hearing would involve a special justice (\$86.25 per hearing), and if half of such hearings (3,020) included an attorney (\$100.00 per hearing), the fiscal impact of this bill would be an annual increase of \$823,086. If, however, only a quarter of these cases would result in an order for mandatory outpatient treatment and a status hearing involving a special justice and if half of the hearings included an attorney, the increased yearly total would be \$411,543.

- 9. Specific Agency or Political Subdivisions Affected** Department of Behavioral Health and Developmental Services, Community Services Boards (CSBs), State Hospitals, Department of Criminal Justice Services, Office of the Executive Secretary

10. Technical Amendment Necessary: No

11. Other Comments: None