

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: SB1184

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

2. Patron: Deeds

3. Committee: Senate Committee on the Judiciary

4. Title: Standby guardianship

5. Summary: The proposed bill adds the detention, incarceration, or deportation of a parent to the list of triggering events for which a parent may designate a standby guardian to be appointed for the care of the parent's minor child.

6. Budget Amendment Necessary: Indeterminate. See Line 8.

7. Fiscal Impact Estimates: Preliminary (see Line 8)

8. Fiscal Implications: Currently, the standby guardianship statutes (Va. Code §§ 16.1-349 through 16.1-355) provide a process by which a qualified parent (defined in § 16.1-349 as a parent who has a progressive or chronic condition caused by injury, disease or illness from which it is improbable they will recover) can petition the court to appoint a standby guardian to temporarily assume the duties of guardian of a minor child on behalf of or in conjunction with the qualified parent upon the occurrence of a triggering event. Qualified parents may also designate a standby guardian in writing outside of the court process but the standby guardian is required to file a petition with the court for approval of the designation after the triggering event has occurred.

According to the Office of the Executive Secretary of the Supreme Court (OES), the proposed bill would expand the standby guardianship process to any parent who may be detained, incarcerated, or deported for any length of time. OES believes this change could result in an increase in the number of petitions being filed in the Juvenile and Domestic Relations District Court (JDR) by parents anticipating detention, incarceration or deportation for any period of time, even for a short duration. Unlike the current statute (§ 16.1-349) which requires the parent to have a progressive or chronic medical condition as a prerequisite to filing the petition, there is no requirement that the petitioner have a basis for anticipating detention, incarceration or deportation.

Under the proposed bill, each petition would be docketed for a hearing on the petition requiring summons and notices of hearing to be prepared and issued. Courts have the discretion to appoint a guardian ad litem to represent the interests of the child/children for petitions filed by the parent. For petitions filed by someone other than the parent, a guardian ad litem would be appointed. The courts would also have the discretion to appoint counsel

for the parents, regardless of who filed the petition. For this reason, the Office of the Executive Secretary believes this bill is likely have an impact on the Criminal Fund. However, at this time a specific amount cannot be determined since the number of petitioners cannot be accurately estimated.

Additionally, the bill is expected to increase the number of petitions for custody and requests for emergency hearings filed in the JDR courts in contests and disputes over who has the care and custody of the child upon the parent's release from detention, incarceration, or deportation, if a standby guardian was appointed. Therefore, the workload of JDR court clerks is expected to be impacted by the processing of these petitions.

9. Specific Agency or Political Subdivisions Affected: Courts

10. Technical Amendment Necessary: No

11. Other Comments: None