

Department of Planning and Budget
2021 Special Session I - Fiscal Impact Statement

1. Bill Number: SB1266 ER

House of Origin	<input type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input checked="" type="checkbox"/>	Enrolled

2. Patron: Deeds

3. Committee: Passed by both houses

4. Title: Admission to bail; rebuttable presumptions against bail.

5. Summary: Current law requires a judicial officer to presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1 (Sentence of person twice previously convicted of certain violent felonies);
2. An offense for which the maximum sentence is life imprisonment or death;
3. A violation of § 18.2-248, 18.2-248.01, 18.2-255, or 18.2-255.2, which prohibit the manufacture, distribution, and transportation of certain controlled substances, involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;
4. A violation of § 18.2-308.1, 18.2-308.2, or 18.2-308.4, which relate to the possession of firearms and other weapons, and which relates to a firearm and provides for a mandatory minimum sentence;
5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of the Commonwealth or substantially similar laws of the United States;
6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;
7. An offense listed in subsection B of § 18.2-67.5:2 (Punishment upon conviction of certain subsequent felony sexual assault) and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;
8. A violation of § 18.2-374.1 (Production, publication, sale, financing, etc., of child pornography; presumption as to age) or 18.2-374.3 (Use of communications systems to facilitate certain offenses involving children), where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person;

9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5, or 18.2-46.7, which pertain to certain street gang, prostitution, and sex trafficking penalties;
10. A violation of § 18.2-36.1, 18.2-51.4, 18.2-266, or 46.2-341.24, which pertain to manslaughter and maiming resulting from driving while intoxicated and prohibit driving while intoxicated in general, and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction;
11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4, which establish penalties for violating protective orders, or a substantially similar offense under the laws of any state or the United States;
12. A violation of subsection B of § 18.2-57.2, which establishes a felony penalty when a person has been previously convicted of two offenses of certain assault and battery charges against a family or household member;
13. A violation of subsection C of § 18.2-460, which establishes a felony penalty for obstructing or impeding the administration of justice, charging the use of threats of bodily harm or force to knowingly attempt to intimidate or impede a witness;
14. A violation of § 18.2-51.6 (Strangulation of another; penalty) if the alleged victim is a family or household member as defined in § 16.1-228; or
15. A violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, which pertain to human trafficking, receiving money from earning of prostitutes or commercial sex trafficking.

Current law also requires the judicial officer to presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is being arrested pursuant to § 19.2-81.6 (Authority of law-enforcement officers to arrest illegal aliens).

For a person who is charged with an offense giving rise to a rebuttable presumption against bail, any judicial officer may set or admit such person to bail in accordance with § 19.2-120 (Admission to bail). The judicial officer must consider certain factors for the purpose of rebuttal of the presumption against bail as enumerated above, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public. These factors include: the nature and circumstances of the offense charged; the history and certain characteristics of the person; and the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

Current law also provides that when a district court grants bail over the presumption against bail in a matter that is governed by the sections of § 19.2-120 described above, or § 19.2-120.1 (Presumption of no bail for illegal aliens charged with certain crimes), and upon notice by the Commonwealth of its appeal of the court's decision, the court shall stay execution of such order for so long as reasonably practical for the Commonwealth to obtain an expedited hearing before the circuit court, but in no event more than five days, unless the defendant requests a hearing date outside the five-day limit.

This bill eliminates all of the provisions described above and repeals § 19.2-120.1 (Presumption of no bail for illegal aliens charged with certain crimes). The enrolled bill

requires a judicial officer, when making a determination on granting bail, to consider all relevant information, including (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the commission of the offense; (iii) the weight of the evidence; (iv) the history of the accused or juvenile including his family ties, or involvement in employment, education, or medical, mental health, or substance abuse treatment; (v) his length of residence in, or other ties to, the community; (vi) his record of convictions; (vii) his appearance at court proceedings or flight to avoid prosecution or convictions for failure to appear at court proceedings; (viii) whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness, juror, victim, or family or household member as defined in § 16.1-228.

Current law provides that anyone who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise, must be admitted to bail by a judicial officer, unless there is probable cause to believe that he is an unreasonable danger to himself or to the public. The enrolled bill expands this provision to include anyone who constitutes an unreasonable danger to family or household members as defined in § 16.1-228.

6. Budget Amendment Necessary: Indeterminate

7. Fiscal Impact Estimates: Final. See Item 8 below.

8. Fiscal Implications: According to data provided by the Compensation Board, on January 18, 2021 (one-day snapshot), there were 5,350 offenders being held pre-trial in jails who had at least one offense under at least one of the statutes that currently presumes denial of bail. This analysis includes data only on identifiable offenses of the statutes listed in the bill. However, the estimated offenders in this category may also have other charges that are not in the presumptive denial of bail statutes. Of those charges identified on January 18, 2021, approximately 68 percent of the charges included in the Compensation Board's data involved three of the enumerated categories above:

- an act of violence as defined in § 19.2-297.1 (Sentence of person twice previously convicted of certain violent felonies);
- a violation of § 18.2-248, 18.2-248.01, 18.2-255, or 18.2-255.2, which prohibit the manufacture, distribution, and transportation of certain controlled substances, involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248; and
- a violation of § 18.2-308.1, 18.2-308.2, or 18.2-308.4, which relate to the possession of firearms and other weapons, and which relates to a firearm and provides for a mandatory minimum sentence.

The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails'

operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019. However, any savings associated with this bill cannot be determined at this time because there are several factors that are unknown, such as whether the offenders have prior convictions, or are charged with multiple offenses and other factors the judicial officer might take into consideration prior to granting bail.

This bill is not expected to have a fiscal impact on the operations of the Courts.

9. Specific Agency or Political Subdivisions Affected: Local and regional jails.

10. Technical Amendment Necessary: No

11. Other Comments: None