

Department of Planning and Budget 2009 Fiscal Impact Statement

1. Bill Number: SB840

House of Origin X Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Cuccinelli

3. Committee: Senate Committee on Courts of Justice

4. Title: **Mandatory outpatient treatment following inpatient treatment.**

5. Summary: Allows a court to enter an order for mandatory outpatient treatment following involuntary admission, which orders a person who has been involuntarily admitted to mandatory outpatient treatment. The criteria for such an order differ from the criteria used for a mandatory outpatient treatment order entered where the person was not first involuntarily admitted. The criteria for an order for mandatory outpatient treatment following involuntary admission are that the person (i) has mental illness; (ii) no longer needs inpatient hospitalization but requires mandatory outpatient treatment to prevent rapid deterioration of his condition that would likely result in his meeting the criteria for inpatient treatment; (iii) is not likely to obtain outpatient treatment unless the court enters the order; and (iv) is likely to comply with the order. Additionally, services must actually be available in the community and providers of services must have actually agreed to deliver the services. The bill also sets forth how orders for mandatory outpatient treatment following involuntary admission will be enforced, reviewed, continued, and rescinded.

6. Fiscal Impact Estimates: Preliminary (see Item 8)

7. Budget Amendment Necessary: Yes, Item 41

8. Fiscal Implications: The proposed legislation provides for a new hearing type when a petitioner seeks an order for mandatory outpatient treatment of an adult with mental illness following involuntary admission to an inpatient treatment facility. An order for mandatory outpatient treatment could be followed by petitions alleging noncompliance by the person who is subject to the mandatory outpatient treatment order; for review of the mandatory outpatient treatment order; or for rescission of the mandatory outpatient treatment order. A petition for mandatory outpatient treatment following involuntary admission would be filed for a hearing before a district court judge or special justice, like other involuntary treatment hearings. The hearing must be scheduled and notice provided by the court within a short time after filing. Accommodating such hearings, which must be held within five days after the filing of the petition, would necessarily affect docket schedules and could result in delays of other district court cases.

This proposed new mandatory outpatient treatment case would be assigned to a judge or special justice or could be transferred to the district court in the jurisdiction where the person resides, as appropriate. A fiscal impact is associated with the bill for the cost of clerk time

and judge time, which is not quantifiable, and for compensating special justices and substitute judges, which is quantifiable. The person who is the subject of the hearing would be entitled to court appointed counsel and an independent evaluation of the respondent would be ordered upon the request of any person given notice of the proceeding. The cost of mileage, tolls and postage for non-court employees can be factored in.

According to the Supreme Court of Virginia (SCV), approximately 18,000 involuntary admission hearings are held in a calendar year. Nearly 50 percent of respondents are involuntarily commitments to a facility, or 9,000 persons. The filing of a petition for mandatory outpatient treatment after admission in 20 percent of these cases would result in 1,800 additional hearings. If one more hearing is held in each of these cases, for disposition of the petition, noncompliance with the order, review of the mandatory outpatient treatment plan, or rescission of the mandatory outpatient treatment order, this new case type ultimately would generate 3,600 additional hearings filed in district courts per year.

In addition, it is estimated that a special justice presides over 90 percent of involuntary admission cases at a cost of \$86.25 per hearing. At this rate, the additional hearings occasioned by this proposed legislation would cost \$279,450 in special justice fees per year ($3,240 \times \$86.25$), plus their mileage, tolls and postage. (NOTE: Current law allows reimbursement for mileage. Senate Bill 1078, 2009 Session would add reimbursement for toll and postage expenses at a fiscal impact of \$75,000, for a total of approximately \$354,450 ($279,450 + 75,000$) paid to special justices.)

The fees of court appointed attorneys would apply in all 3,600 additional cases, which, at the current rate of \$75.00 per hearing, would result in a fiscal impact of \$270,000, plus expenses. If attorney expenses were roughly equivalent to those of special justices, the fiscal impact of court appointed attorneys for respondents would total \$345,000 ($270,000 + 75,000$).

Independent examiners are currently paid \$75.00 per case, plus expenses. If an independent examiner evaluation were engaged in 20 percent of mandatory outpatient treatment after admission cases (1,800), the cost in fees alone would be \$27,000 (360×75.00). Independent examiners attended 64 percent of hearings, so reimbursement for mileage and tolls would be less than for attorneys. If \$37,500 is reduced by 36 percent to account for independent examiners without mileage and toll expenses, the cost of expense reimbursement would be \$24,000 ($\$37,500 - \$13,500$), totaling \$51,000 ($27,000 + 24,000$) for the cost of independent examiners in the additional hearings contemplated by this bill.

Substitute judges are paid at a rate of \$100 for a half day and \$200 for a full day of work, or may bill in these cases at the same rate as special justices (i.e., per hearing rather than per day). This variability makes specific costs associated with the use of substitute judges unquantifiable. However, it is expected that substitute judges would be utilized at these rates in some percentage of the 10 percent of cases not handled by special justices.

Additional costs anticipated for hearings on mandatory outpatient treatment after admission, when appointment of a language or hearing translator is necessary (in one percent of cases), and for appeals (24 from district to circuit courts annually). These costs are not quantifiable.

Thus, using the assumptions noted, the total quantifiable fiscal impact from this bill is approximately \$750,450 per year. As noted, there is an additional, unquantifiable impact to the court system from the use of judges and substitute judges, as well as from additional duties placed upon clerks.

According to the Department of Medical Assistance Services, this legislation has no material fiscal impact on their agency operations.

9. Specific Agency or Political Subdivisions Affected: Courts

10. Technical Amendment Necessary: No

11. Other Comments: None

Date: 2/4/2009

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