

Department of Planning and Budget 2013 Fiscal Impact Statement

1. Bill Number: HB1365

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

2. Patron: Morrissey

3. Committee: House Committee for Courts of Justice

4. Title: Mental health experts; appointment in criminal cases not involving insanity defense or competency.

5. Summary: Provides that in a felony criminal case for an alleged crime other than capital murder, the attorney for the Commonwealth or the defendant may, at least 60 days prior to trial, move the court to require a mental health evaluation of the defendant. Upon such motion, and for good cause shown, the court shall conduct a hearing to consider evidence of mental health issues relevant to the trial or sentencing of the defendant when consideration of such issues is not otherwise provided for, e.g., when insanity is raised as a defense or competency to stand trial is at issue.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Indeterminate (see Item 8)

8. Fiscal Implications: Since this bill would provide for the appointment of a mental health expert to evaluate the defendant for any non-capital felony case, it is reasonable to expect that the number of such experts paid pursuant to Virginia Code § 19.2-175 will increase. During FY2012, a total of \$1,388,000 was paid for such experts under this statute.

According to the Office of the Executive Secretary of the Supreme Court (OES), there are several features of this bill as introduced that are likely to affect the number of experts appointed and the resulting cost to the Criminal Fund. First, the bill does not restrict the appointment of experts to indigent defendants. Second, the number of additional experts appointed will be a function of how often either the defense or the prosecution requests such an expert evaluation. Third, the burden of proof the bill places upon the party seeking an expert “a particularized showing of evidence by the party making the motion and upon a finding by the court of probable cause that the mental health of the defendant would be a significant factor in his trial or at sentencing” follows the test set forth by the Supreme Court of Virginia in the decision in *Husske v. Commonwealth*, 252 Va. 203, 211-212 (1996), so it involves criteria familiar to Virginia trial courts. Accordingly, while it is not expected that a mental health expert would be appointed in all or, given the burden of proof, necessarily even in most felony trials, it is reasonable to expect that fiscal impact would be a notable increase over the amount spent in FY2012.

9. Specific Agency or Political Subdivisions Affected: Courts

10. Technical Amendment Necessary: No

11. Other Comments: None

Date: January 30, 2013

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