

Department of Planning and Budget 2013 Fiscal Impact Statement

1. Bill Number: HB1376

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|------------------------|--|-------------------------------------|------------------------------------|
| 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: Merricks

3. Committee: Courts of Justice

4. Title: Controlled substances; law-enforcement officer's testimony regarding field-test identification.

5. Summary: This bill provides that any law-enforcement officer shall be permitted to testify as to results of field tests approved by the Department of Forensic Science regarding identification of a substance at issue in a preliminary hearing on a violation of subdivision 6 of § 53.1-203 (possession of drugs by an inmate). Under current law, this provision applies to only violations of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 (drug crimes).

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Minimal. Preliminary.

8. Fiscal Implications: This bill allows any law enforcement officer to testify at a preliminary hearing as to the results of field testing of cases involving possession by a prisoner (tests that are approved by the Department of Forensic Science).

Under current procedure, if a substance is found on an inmate at the Department of Corrections (DOC), a trained institutional investigator or K-9 officer may do a field test to try to identify the substance. If the test is positive or it is believed that it may be another controlled substance, DOC would consult with a Special Agent at the Office of the Inspector General (OIG) on the case. They normally accept the case and the substance found is submitted to the state laboratory for analysis. However, if the OIG declines the case, the institutional investigator could submit the substance to the state laboratory and present the case to the local Commonwealth Attorney for possible prosecution. The bill would have minimal effect on DOC, although it will facilitate prosecution by allowing the field test testimony. However, the inmate or his attorney can still request certification of the substance from the state laboratory.

The bill would be expected to have an impact on local law enforcement or Virginia State Police officers who may be called to testify in preliminary hearings as to field test results in investigations of possession of drugs by an inmate. However, during FY 2013, examiners at the Department of Forensic Science (DFS) have appeared in only two preliminary hearings relating to prisoner possession. Allowing law enforcement officers to testify as to the results of field test kits in these felony preliminary hearings will likely result in very minimal

savings of time and expense for DFS and a minimal increase for law enforcement. The role of DFS would remain what it is at present, i.e., to review and approve the use of particular field tests to identify certain controlled substances, and to supply law enforcement agencies marijuana field test kits for use in simple misdemeanor possession of marijuana cases.

Neither the Department of Corrections nor the Department of Forensic Science anticipate any significant impact on either financial or personnel resources.

9. Specific Agency or Political Subdivisions Affected: Department of Forensic Science, Department of Corrections, Virginia State Police, local law enforcement.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill amends § 19.2-188.1 to provide that any law-enforcement officer shall be permitted to testify in a preliminary hearing regarding the results of field tests approved by the Department of Forensic Science and used to identify a substance at issue on a violation of subdivision 6 of § 53.1-203 (possession of drugs or marijuana by an inmate, which is a felony). Under current law, this provision applies to only violations of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 (drug crimes).

Date: 1/17/13

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c: Secretary of Public Safety