

Department of Planning and Budget 2014 Fiscal Impact Statement

1. Bill Number: SB56

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

2. Patron: McDougle

3. Committee: Senate Committee for Courts of Justice

4. Title: Persons not guilty by reason of insanity; court-appointed counsel fees.

5. Summary: Increases from \$25 to \$75 the fee paid to court-appointed counsel representing a person in a civil commitment proceeding under Title 19.2 (Criminal Procedure). The bill also provides that court-appointed counsel representing a person who was acquitted of a felony by reason of insanity in a hearing to assess the need for inpatient hospitalization of the acquittee shall be paid a fee not to exceed \$445 based on an hourly rate set by the Supreme Court of Virginia. This bill is a recommendation of the Judicial Council.

6. Budget Amendment Necessary: Yes, Item 42

7. Fiscal Impact Estimates: Preliminary

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2015	\$40,530	General Fund
2016	\$40,530	General Fund
2017	\$40,530	General Fund
2018	\$40,530	General Fund
2019	\$40,530	General Fund
2020	\$40,530	General Fund

8. Fiscal Implications: This bill would increase expenditures from the Involuntary Mental Commitment (IMC) fund for fees paid to court appointed counsel from \$25 to \$75 per hearing to represent a person (incarcerated in a local jail or on conditional release) whose commitment is sought. It would also increase expenditures from the Criminal Fund for counsel fees increased from \$25 to up to \$445 for hearings to assess the need for inpatient hospitalization pursuant to § 19.2-182.5 of a person who was found not guilty of a felony by reason of insanity.

§ 19.2-182 of the Virginia Code establishes the right to counsel for a person whose commitment is sought under Title 19.2. It also provides that the court shall appoint an attorney to represent any person who is not represented by counsel, for a fee of \$25 to be paid by the Commonwealth.

This proposed legislation seeks to increase fees for services of court appointed counsel appointed to represent respondents in commitment proceedings that fall into two categories with Title 19.2. The first category of hearings is presided over by a district court judge or special justice, to hospitalize an inmate at a local correctional facility for psychiatric treatment pursuant to § 19.2-169.6, or to hospitalize an acquittee on conditional release pursuant to § 19.2-182.9. Under this proposal, the court appointed counsel fee for representing a respondent in these proceedings would increase from \$25 to \$75, which is consistent with the fee amount for court appointed counsel representing individuals who are not inmates or acquittees in similar commitment hearings.

In fiscal year 2013, approximately \$11,025 was paid from the IMC fund to court appointed counsel for services representing inmates and acquittees in 441 commitment and recommitment hearings. Assuming the hearing rate remains stable at 441 per year, the estimated amount paid to court appointed attorneys for their services as counsel to respondents in these hearings would likely increase to a maximum of \$33,075, for an estimated fiscal impact of \$22,050 to the IMC fund.

The second category of hearings is held in a circuit court pursuant to § 19.2-182.5 to review the commitment of a person acquitted of a felony by reason of insanity ("Felony NGRI"). A hearing to assess the need for inpatient hospitalization of each acquittee who is acquitted of a felony by reason of insanity is held by the committing circuit court at yearly intervals for five years and at biennial intervals thereafter. These proceedings are complex and can be lengthy (2-3 hours long), involving expert witnesses. Under this proposal, § 19.2-182 would be amended, increasing the fee for court appointed counsel in these cases from \$25 to a sum not to exceed \$445. The \$445 threshold is equivalent to the current lower tier felony rate established for court appointed counsel in criminal cases pursuant to § 19.2-163.

In fiscal year 2013, court appointed attorneys were paid \$25 each for their services as counsel to the respondent in 44 felony NGRI hearings, for a total of \$1,100. Under this proposal, assuming the hearing rate remains stable at 44 per year, the estimated amount paid to court appointed counsel for these hearings would increase to a maximum of \$19,580 per year, for an estimated fiscal impact of \$18,480 to the Criminal Fund.

The total estimated fiscal impact of this proposed legislation to the Commonwealth would be \$40,530 (\$22,050+\$18,480). This of course assumes the hearing rate would remain at the 2013 level.

9. Specific Agency or Political Subdivisions Affected: Courts

10. Technical Amendment Necessary: No

11. Other Comments: Same as HB91