

Department of Planning and Budget

2017 Fiscal Impact Statement

1. **Bill Number:** HB2059

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

2. **Patron:** Watts

3. **Committee:** House Committee for Courts of Justice

4. **Title:** Drug Treatment Court Act; eligibility.

5. **Summary:** Eliminates the restriction that renders persons convicted of certain violent felonies within the preceding 10 years ineligible to participate in a drug treatment court. Persons convicted of felony acts of violence (i.e, offenses that result in life imprisonment upon conviction of a third offense) within the preceding 10 years will remain ineligible to participate in a drug treatment court.

6. **Budget Amendment Necessary:** No

7. **Fiscal Impact Estimates:** Preliminary (see Item #8)

8. **Fiscal Implications:** Currently, under Virginia law, adult offenders who have been convicted of a violent criminal offense under §§ 17.1-805 or 19.2-297.1 within the preceding 10 years, or juvenile offenders who previously have been adjudicated not innocent of any such offense within the preceding 10 years, are not be eligible for participation in any drug treatment court programs.

The proposed legislation would allow an individual convicted of violent criminal offense within the preceding 10 years to be eligible to participate in a drug treatment court. Persons convicted of felony acts of violence as defined in §19.2-297.1 (i.e, offenses that result in life imprisonment upon conviction of a third offense) within the preceding 10 years will remain ineligible to participate in a drug treatment court.

Drug treatment courts in Virginia are supported by either direct federal funding, state funding, local appropriations, private funding or a combination of these funding sources. Since 2012, drug treatment courts in the Commonwealth have received \$4.7 million in federal grants to support nonviolent, criminally involved persons with substance-use disorders. According to the Office of the Executive Secretary (OES), under current federal law, “violent offenders” are not permitted to participate in drug treatment courts and the Attorney General of the United States is obligated to suspend the federal grant immediately to any court which permits such participation (42 U.S.C. § 3797u-1).

Under federal law, violent felony or crime of violence is defined in U.S.C. § 16 (b) as:

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

As a compliance requirement of the grant, each grant recipient has to certify each year that the grant funds are used only for eligible drug treatment court program participants.

Therefore, while there is potential that some localities may lose their federal funding, that determination would be made by the federal agency that issued the grant.

The proposed legislation would increase the number of offenders that could be eligible for drug treatment court programs. According to data from the Virginia Criminal Sentencing Commission (VCSC) which is based solely on the offender's criminal history (up to and including the current offense) as identified in the Sentencing Guidelines Data System, in the past ten year (FY 2007 – FY 2016) the number of individuals eligible for drug treatment court program under current law (no conviction for offenses under §§17.1-805 or 19.2-297.1) was 14,811.

Using the most current data available (FY 2016), there were an additional 5,508 offenders sentenced in FY 2016 who had a conviction for an offense listed only in §17.1-805 (i.e., the offense is not listed in §19.2-297.1). Many of these convictions involved Larceny, Fraud, Traffic (DUI), and Burglary as the primary offense.

The FY 2017 data is not yet available, however assuming the same number of offenders are sentenced in FY 2017, it would have fiscal impact on the drug court programs. Because it is unknown how many offenders under this proposed legislation would be referred to drug courts, it is unclear whether all drug court programs have the capacity to absorb additional program participants without additional resources. All drug treatment courts in the Commonwealth contract with local Community Service Boards (CSB's) for drug treatment and counseling services. The potential impact of this bill on local CSB resources is unknown.

According to the Department of Corrections (DOC), the addition of this offender population to the agency's supervision caseload would not have a notable fiscal impact.

9. Specific Agency or Political Subdivisions Affected: Courts, Commonwealth's Attorney's, Department of Corrections, CSBs.

10. Technical Amendment Necessary: No

11. Other Comments: Same as SB1227. The data from the Sentencing Commission regarding eligibility for drug court programs is based solely on the offender's criminal history (including the current offense as identified in the Sentencing Guidelines Data System. The analysis is not based on criminal history records maintained by the Virginia State Police. and does not include prior adjudications in Juvenile and Domestic Relations (JDR) Court nor any other drug court eligibility criteria other than criminal record.