

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB873

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: Bourne

3. Committee: House Committee for Courts of Justice

4. Title: Discovery in criminal cases; penalties.

5. Summary: The proposed legislation sets out specific requirements and procedures for discovery by an accused and by the Commonwealth in a criminal case. The bill requires a party requesting discovery to request that the other party voluntarily comply with such request prior to filing any motion before a judge. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery with the court. The bill details information that is subject to discovery and provides a mechanism for redaction of certain personal identifying information. The bill also creates a procedure whereby the parties may conduct depositions of witnesses prior to trial and use statements obtained during such depositions for impeachment at trial as a prior inconsistent statement. The bill creates a procedure for either party to move the court to enter a protection order with regard to discovery and, if granted, the court may order any condition limiting, but not preventing, disclosure, so long as the condition is necessary to the orderly adjudication of the case or to the fair administration of justice. Finally, the bill (i) makes it a Class 6 felony for any person to willfully omit or misrepresent evidence or information required to be disclosed to the accused, (ii) makes it a Class 1 misdemeanor for any person to willfully omit or misrepresent any other evidence of information required to be disclosed, and (iii) grants the court the ability to impose additional remedies it deems just if a party fails to comply with any of the requirements.

6. Budget Amendment Necessary: Yes, Item 402.

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

8. Fiscal Implications: The Office of the Attorney General (OAG) reports that the proposed legislation imposes additional duties related to discovery in criminal cases upon prosecutors, which are difficult to quantify. Generally, for every two to three prosecuting attorneys, one additional paralegal is required to assist with the anticipated incoming quantity of discovery documents and depositions, which the proposed legislation permits. Additionally, the OAG states that victim witness advocate staff may also be needed, as prosecutors alone may not be able to attend to the responsibility of maintaining contact with victims, complainants, and witnesses. The OAG also believes that travel expenses, costs associated with expert witnesses, and deposition expenses relative to criminal prosecutions may increase. However,

the OAG states that the amount of prosecuting attorneys required as a result of the proposed legislation cannot be determined at this time.

While the legislation may increase the workload of the courts and the Commonwealth's attorney, the fiscal impact cannot be determined at this time. However, The Virginia Indigent Defense Commission anticipates a minimal fiscal impact as a result of the proposed legislation.

According to the Virginia Criminal Sentencing Commission (Sentencing Commission), the proposed legislation adds §§ 19.2-264.6 through 19.2-264.15 to the Code of Virginia, to establish requirements and procedures for discovery by an accused and by the Commonwealth in criminal cases. The proposed legislation also makes it a Class 6 felony for any person to willfully omit or misrepresent evidence or information required to be disclosed to the accused. Additionally, the proposed legislation makes it a Class 1 misdemeanor for any person to willfully omit or misrepresent any other evidence or information required to be disclosed. In addition to possible criminal charges, the court, as proposed, could impose additional remedies it deems just if a party fails to comply with any of the requirements of the statute.

The Sentencing Commission states that by adding criminal penalties for misrepresenting or omitting evidence or information during the discovery process, the proposal may result in felony convictions. Thus, should additional felony convictions result from the proposed legislation, the Sentencing Commission states that the proposed legislation may increase the state-responsible (prison) bed space needs of the Commonwealth. However, According to the Virginia Criminal Sentencing Commission, not enough information is available to reliably estimate the increase in jail population as a result of this proposal. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018. Additionally, for someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to 12 months in jail, or one to five years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected: Office of the Attorney General, Commonwealth's Attorneys, Courts, Indigent Defense Commission.

10. Technical Amendment Necessary: No.

11. Other Comments: None.