

**Department of Planning and Budget**  
**2020 Special Session I - Fiscal Impact Statement**

**1. Bill Number:** SB5007S2

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

**2. Patron:** Morrissey

**3. Committee:** Senate Finance and Appropriations

**4. Title:** Sentencing reform in criminal cases

**5. Summary:** The substitute bill provides that in a criminal case the court shall ascertain the extent of the punishment unless the accused has requested that the jury ascertain punishment or was found guilty of capital murder. The bill establishes that the court will determine the period of incarceration and the amount of the fine, if any, when a person is convicted of a criminal offense unless the accused is tried by a jury and has requested that the jury ascertain punishment. Such request for a jury to ascertain punishment must be filed as a written pleading with the court at least 30 days prior to trial.

The bill states the Commonwealth's Attorney cannot withhold his concurrence to proceeding without the intervention of a jury if the accused consents to proceeding in such a manner when an order declaring a judicial emergency has been entered and such order suspends criminal jury trials.

**6. Budget Amendment Necessary:** See Line 8.

**7. Fiscal Impact Estimates:** Indeterminate (see Line 8)

**8. Fiscal Implications:** According to the Executive Secretary of the Supreme Court ("OES") and the Virginia Association of Commonwealth's Attorneys ("VACA"), the proposed bill is expected to impact multiple areas of the judicial system due to the anticipated increase in the percentage of criminal defendants who will be tried by juries. However, because the choice of trial by jury is the result of choices by independent decision-makers, it is not possible to quantify the fiscal impact.

**Circuit court judges**

An increase in the number of criminal jury trials could create a stacking effect on circuit court dockets, delaying the adjudication of all cases. The delay in hearing civil cases would be particularly pronounced because (i) jury trials are far more time-consuming than bench trials, and (ii) criminal proceedings generally take precedence over civil matters. While it is not possible to calculate a specific fiscal impact, OES believes there will be an impact on the circuit court docket.

The current weighted caseload calculations used to predict judicial staffing needs in the courts are estimates of the total time required for various categories of cases, however, they do not separately, specifically identify the additional amount of time associated with the choice of trial by jury. Consequently, any estimate on the number of additional circuit judges needed could not be ascertained until the weighted caseload calculations are revised with new case weights that would reflect the increase in jury trials that are expected if this bill is enacted. The difficulty of creating quantitative fiscal estimates is further complicated by the orientation of the circuit court case management system, which is case-based, not defendant-based or trial-based.

For reference purposes, the first year annual cost for each new circuit court judge is \$276,314. The annual cost in the second year and beyond would be \$273,814.

### **Circuit court clerks**

With the addition of more judges and in order to avoid delays, additional court staff may be needed including additional deputy circuit court clerk positions. Currently, jury trials comprise only a small portion of all trials conducted but it is expected that the provisions of this bill will increase jury trials in the Commonwealth. One of the biggest unknowns is the amount of additional clerk time that would be necessary. According to OES, there is no metric available to determine the average length of a jury trial versus a bench trial. However, jury trials are typically longer and place additional responsibilities on clerks (i.e.-compile jury lists, call jury panel, etc.), therefore, more clerks may be needed.

It is not possible to determine the number of additional clerks (or the associated fiscal impact) that would be necessary under the provisions of this bill. For reference purposes, the annual cost for a new deputy court clerk I position is \$27,941, with a shared benefits cost to the locality of \$878. Circuit court clerks receive their state-supported appropriations through the State Compensation Board.

For each new judgeship added, a new deputy circuit court clerk position would be needed.

### **Jurors**

In FY 2019, OES reports that \$2.3 million was paid out under § 17.1-618, Code of Virginia, in jury expenses. This figure represents the juror cost only for criminal jury trials. With the provisions of this bill, juror costs may increase. As noted above, many of the requirements regarding jurors are the responsibility of clerk's offices.

### **Commonwealth's Attorneys**

According to data received by VACA from the National Center for State Courts, the rate at which a defendant proceeds with a jury trial instead of a guilty plea, bench trial, or some other dismissal ranges from a high of 4.1 percent to a low of less than 1.0 percent. According to the Sentencing Commission, there were 24,499 sentencing guideline worksheets submitted in FY2018. Adjudication by a judge in a bench trial accounted for 8 percent (roughly 1,960) of all felony guideline cases sentenced. In FY2018, the Commission received 270 felony guidelines for cases adjudicated by a jury, a rate of 1.1 percent. While this data shows that

the current percentage of cases tried by a jury is low, any increases in the number of jury trials may have a workload impact.

It is not possible to determine the precise fiscal impact this bill would have on Commonwealth's Attorneys offices; however, for reference purposes, the starting salary for each new Assistant Commonwealth's Attorney position is \$56,697. The cost for each associated administrative support position is \$26,185.

### **Public Defenders**

According to the Virginia Indigent Defense Commission ("VIDC"), the proposed bill is not expected to create a material fiscal impact for the agency. However, in areas of the Commonwealth that are not covered by a VIDC office, court-appointed attorneys would be called upon to provide legal services. If court-appointed attorneys start receiving more jury cases as a result of this bill, it could have a fiscal impact on the court-appointed attorney waiver program appropriation. Currently, under Item 36, Chapter 1289, 2020 Virginia Acts of Assembly (the Appropriation Act), \$5,175,000 is appropriated each year of the biennium for the waiver program.

### **Sheriffs**

Sheriff's office personnel are responsible for providing courtroom security when court is in session. If more court days are in session or courtrooms are created to handle the anticipated increase in jury trials, this will have an impact on Sheriff's office staffing. This impact could be accounted for through current deputy sheriffs working additional hours or the hiring of additional deputy sheriff positions. Due to the unknown potential number of new court days and number of variables that would have to be considered by each individual Sheriff, it is not possible to calculate a fiscal impact.

The annual cost (salary + benefits) for each new entry level sworn court services deputy is \$36,843 the first year and \$38,523 for the second year and the years thereafter.

The Appropriation Act (Item 68 C. of Chapter 1289, 2020 Virginia Acts of Assembly) caps the number of deputy sheriffs assigned to Circuit courtroom security while court is in session at two. For each new circuit court judgeship added, two deputy sheriff positions should be funded.

### **Office of the Attorney General**

According to the Office of the Attorney General (OAG), the proposed legislation could increase jury trial appeals which tend to have longer records and additional considerations for appellate review (i.e. voir dire, jury instructions, etc.). The OAG also believes that it is likely there would be less plea agreements and more trials which would mean more opportunities for individuals to appeal convictions. However, the exact number of additional cases the OAG would have to handle is unknown at this time. If more appeals are filed as a result of this legislation, the OAG has indicated that they may need up to two positions at an estimated cost of \$319,975 to handle appellate reviews.

### **Courthouses**

If additional courtrooms are needed, there would be costs associated with reconfiguring courthouses. The need for reconfiguration will vary from courthouse to courthouse; therefore, a fiscal impact cannot be determined.

**9. Specific Agency or Political Subdivisions Affected:** Courts, Commonwealth's Attorneys', circuit court clerks, public defenders and Sheriffs.

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None