

Department of Planning and Budget 2021 Special Session I - Fiscal Impact Statement

1. Bill Number: HB2047 ER

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. Patron: Bourne

3. Committee: Passed both houses

4. Title: Criminal proceedings; consideration of mental condition and intellectual and developmental disability

5. Summary: Under current law, a judicial officer must consider certain factors in determining, for the purpose of rebuttal of the presumption against bail, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public. These conditions include the physical and mental condition of the person. This bill requires that a diagnosis of an intellectual or developmental disability as defined in § 37.2-100 (defines terms used in Title 37.2 Behavioral Health and Developmental Services) must be considered as part of the mental condition of the person.

Under current law, when a person is tried in circuit court for certain offenses, the court must direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, which is used by the court to determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, and any applicable sentencing guideline worksheets. The bill allows such reports to include any diagnoses of an intellectual or developmental disability as defined in § 37.2-100.

The bill creates § 19.2-271.6, which establishes the admissibility of evidence of a defendant's mental condition and requires notice to the Commonwealth. This new section defines the terms developmental disability, intellectual disability, and mental illness. Under this new section, in any criminal case, evidence concerning the defendant's mental condition at the time of the alleged offense, including expert testimony, must be admitted if such evidence (i) tends to show the defendant did have the specific intent required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence. The enrolled bill requires that evidence offered by the defendant to establish the underlying mental condition must show that his condition existed at the time of the offense and that the condition satisfies the diagnostic criteria for a mental illness, developmental disability or intellectual disability or autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

The bill sets deadlines for giving the attorney for the Commonwealth written notice if a defendant intends to introduce evidence of his mental condition at the time of the alleged offense depending on which court will hold the trial. The period of any such continuance must not be counted for speedy trial purposes under § 19.2-243 (limitation on prosecution of felony due to lapse of time after finding of probable cause; misdemeanors; exceptions). The bill sets requirements for reports or summaries of expert testimony requirements for allowing the Commonwealth to inspect, copy, or photograph such reports. Nothing in this section can be construed to affect the requirements for a defense of insanity as established in Chapter 11 (§ 19.2-167 et seq.).

The enrolled bill amends § 37.2-809 (Involuntary temporary detention; issuance and execution of order), allowing a court to issue an involuntary temporary detention order pursuant to the newly established § 19.2-271.6. The enrolled bill also amends § 37.2-810 (Transportation of person in the temporary detention process), to recognize that a court may issue such an order.

Current law establishes qualifications for court-appointed counsel, setting minimum requirements for the hours of mandatory continuing legal education (MCLE)-approved training, which is developed by the Indigent Defense Commission. This bill increases the number of mandatory hours from six to eight and requires that two of these hours cover the representation of individuals with behavioral or mental health issues and individuals with intellectual or developmental disabilities as defined in § 37.2-100.

The bill includes an enactment clause that requires the Office of the Executive Secretary of the Supreme Court of Virginia to collect and report certain data regarding, among other issues, cases in which a defendant introduces evidence concerning his mental condition pursuant to § 19.2-271.6 and cases in which the court issues a temporary detention order pursuant to § 37.2-809. The report is to be submitted annually to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by December 1, 2021, and December 1, 2022.

The bill also includes an enactment clause that requires the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the Twenty-First Century (the Joint Subcommittee) to study, consider, and provide recommendations regarding the relevant standard of danger to self or others that may be appropriately applied to persons found not guilty under this act in the issuance of emergency custody orders, involuntary temporary detention orders, or the ordering of other mandatory mental health treatments in accordance with Article 4 (§ 37.2-808 et seq.) or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 of the Code of Virginia. The Joint Subcommittee must submit this report to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by December 1, 2021.

6. **Budget Amendment Necessary:** Indeterminate
7. **Fiscal Impact Estimates:** Final. See line 8 below.

- 8. Fiscal Implications:** The enrolled bill would permit evidence offered by the defendant concerning the defendant's mental condition at the time of the alleged offense, including expert testimony that meets the requirements set in the bill. This provision is likely to have a fiscal impact on the Criminal Fund, as the expert witness would be compensated by the Commonwealth in instances where the defendant has been determined to be indigent. However, the number of cases where an indigent defendant would request such expert testimony in accordance with the bill's provisions cannot be known. Therefore, the annual fiscal impact upon the Criminal Fund cannot be determined at this time.

According to the Department of Corrections, this bill is not expected to have a fiscal impact on probation and parole operations. This bill is not expected to have a material fiscal impact on the Indigent Defense Commission or the Board of Bar Examiners. The impact on the Commonwealth's Attorneys and the Department of Behavioral Health and Developmental Services cannot be determined at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Department of Corrections, Commonwealth Attorneys, the Indigent Defense Commission, Department of Behavioral Health and Developmental Services, the Board of Bar Examiners, and Public Defender Offices.

10. Technical Amendment Necessary: No

11. Other Comments: None