

**Department of Planning and Budget
2022 Fiscal Impact Statement**

1. Bill Number: HB104

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

2. Patron: Anderson

3. Committee: House Committee for Courts of Justice

4. Title: Tolling speedy trial provisions

5. Summary: The proposed bill provides for the tolling of speedy trial provisions upon the declaration of a judicial emergency and upon administrative delays resulting from the enactment of Chapter 43 of the 2020 Virginia Acts of Assembly, Special Session I. The bill creates a process by which a party may petition for an immediate interlocutory appeal of a trial date set outside of the speedy trial provisions if such trial could not be scheduled due to such administrative delays. The provisions of the bill related to such administrative delays sunset on December 31, 2024.

6. Budget Amendment Necessary: Yes, Item 51

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

8. Fiscal Implications: Code of Virginia § 19.2-243 (the speedy trial statute) provides that if a defendant accused of a felony is continuously held in custody from the time he is indicted, if there was no preliminary hearing, he must be tried within five months of the date of the indictment. The statute also provides that if the trial does not commence within the stated time period, the defendant “shall be forever discharged from prosecution” for the charged offense. Prejudice is not an element of the speedy trial statute. *Hudson v. Commonwealth*, 267 Va. 36, 41, 591 S.E.2d 679, 681-82 (2004).

The proposed bill adds two new exceptions to the list of events that “toll” speedy trial. The first new exception is delays caused by a “declaration of judicial emergency pursuant to § 17.1-330.” The second exception is delays caused by “administrative delays resulting from the enactment of Chapter 43 of the Acts of Assembly of 2020, Special Session I.” Chapter 43, 2020 Acts of Assembly, Special Session I eliminated the requirement that a jury sentence a defendant after a jury trial.

The bill also addresses what must happen “If an accused cannot be tried within the period of time required due to delays” caused by Chapter 43, 2020 Acts of Assembly, Special Session I. If a trial court cannot set a date within speedy trial due to a delay caused by the increase in jury trial requests, the trial court must “issue an order certifying that such trial date is the earliest reasonable date such trial may be set to meet the ends of justice considering factors such as court staff and facility availability, resources of the attorney for the Commonwealth,

and defense attorney availability.” Either party may take an interlocutory appeal of such an order, and the Court of Appeals must precede such appeals on their docket. The trial court’s order “shall be prima facie evidence of reasonableness, and the Court of Appeals shall not reverse such order unless it finds such order is unreasonable and constitutes an abuse of discretion.”

Commonwealth’s Attorneys’

According to the Virginia Association of Commonwealth’s Attorneys (VACA), the bill provisions may add a small amount of work for Commonwealth’s Attorneys, especially to handle interlocutory appeals, but that impact would likely be outweighed by the bill provision that allows courts to set jury trials outside of speedy trial if there is a significant backlog.

Virginia Indigent Defense Commission (VIDC)

According to VIDC, the proposed bill would likely result in the agency appealing every jury trial case which would equate to anywhere between 5 and 50 percent of their cases, depending on the jurisdiction. The appeals would be handled by the agency’s appellate lawyers and could result in multiple appeals in any case where the trial was continued. VIDC estimates the agency will need 8 additional appellate lawyers at a cost of \$107,490 per attorney.

Office of the Executive Secretary of the Supreme Court (OES)

According to the Office of the Executive Secretary of the Supreme Court, the anticipated fiscal impact of the proposed bill can be accommodated with existing resources.

Office of the Attorney General

According to the Office of the Attorney General, the proposed bill is not expected to have a material fiscal impact on agency operations.

Local correctional facilities/jails

Information on the potential fiscal and/or operational impact to local correctional facilities/jails is not available at the time. Once their analysis is received, the fiscal impact statement will be updated to reflect any material impacts.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Virginia Indigent Defense Commission, Office of the Attorney General, local Commonwealth’s Attorneys’, and local correctional facilities.

- 10. Technical Amendment Necessary:** No

- 11. Other Comments:** None