Department of Planning and Budget
2023 Fiscal Impact Statement

1. **Bill Number:** HB2016H1

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

2. **Patron:**   Adams, L.R.

3. **Committee:** House Appropriations

4. **Title:**   Appointment of counsel

5. **Summary:** The substitute bill adds § 19.2-160.1 (Appointment of counsel in Class 1 felony cases) that establishes that in any case in which an indigent defendant is charged with a Class 1 felony in a jurisdiction in which a public defender office is established, the court must, upon request for the appointment of counsel and in the absence of a conflict, appoint such public defender office to represent the defendant. Upon motion of the attorney from a public defender office, the judge of the circuit court must appoint a competent, qualified, and experienced attorney from the list maintained by the Indigent Defense Commission.

   If the public defender notifies the court of a conflict and withdraws from representation, and the court had appointed one additional counsel to assist the public defender's office, then upon the withdrawal of the public defender's office the court must appoint one additional competent, qualified, and experienced attorney from the list maintained by the Indigent Defense Commission.

   In any case in which an indigent defendant is charged with a Class 1 felony in a jurisdiction in which there is no public defender, upon request for the appointment of counsel, the court must appoint two competent, qualified, and experienced attorneys, from the list maintained by the Indigent Defense Commission.

6. **Budget Amendment Necessary**: Indeterminate

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

8. **Fiscal Implications:** According to the Office of the Executive Secretary of the Supreme Court ("OES"), the bill would require, upon request for the appointment of counsel by an indigent defendant who is charged with a Class 1 felony in a jurisdiction with a public defender office, that an attorney from such public defender office must be appointed to represent the defendant (barring any conflict of interest). Upon motion of the attorney from a public defender office, the judge of the circuit court must appoint co-counsel from the list maintained by the Indigent Defense Commission. In situations where the public defender notifies the court of a conflict of interest, and co-counsel has been appointed, the

representation of the public defender office will be withdrawn and the court must appoint one additional attorney from the list to serve as co-counsel. Additionally, in cases where the defendant is charged with a Class 1 felony in a jurisdiction where there is no public defender, upon request for the appointment of counsel, two attorneys from the list must be appointed to serve as co-counsels for the defendant.

In Fiscal Year 2022, expenditures in the amount of $390,232 were paid from the Criminal Fund for counsel representing defendants charged with Class 1 felonies. This amount includes representation in cases where the defendant was charged in a jurisdiction with no public defender's office, or in a jurisdiction with a public defender's office, but where the public defender was not able to represent the defendant due to a conflict. However, the OES believes if all the provisions of the bill are met, , the costs would be expected to double, as two attorneys would now be appointed to represent the defendant. Therefore, the estimated fiscal impact for these two instances is $390,232. At this time it is unknown how many requests for appointment of counsel would be made.

In addition, the bill would also allow for the appointment of a second attorney in cases where a public defender had been appointed to represent a defendant charged with a Class 1 felony. Information is not available to estimate this fiscal impact; therefore, the fiscal impact is indeterminate.

9. **Specific Agency or Political Subdivisions Affected:** Circuit Courts

10. **Technical Amendment Necessary:** No

11. **Other Comments:** None