

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: SB1174

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Mason

3. Committee: Senate Committee on the Judiciary

4. Title: Expedited diversion to court-ordered treatment in lieu of criminal adjudication.

5. Summary: The proposed bill establishes a process where a defendant who is charged with certain misdemeanor violations and appears to have a mental illness, and such charged conduct appears to be associated with that mental illness, may be considered for transfer from criminal court to civil process for court-ordered mental health treatment without any adjudication on such misdemeanor charges.

6. Budget Amendment Necessary: Indeterminate

7. Fiscal Impact Estimates: Preliminary. See Item 8 below

8. Fiscal Implications: The proposed bill provides a process whereby criminal defendants who are charged with certain misdemeanors and appear to have a mental illness may be transferred from criminal court to a civil process for court-ordered mental health treatment without adjudication on the misdemeanor charges. In such instances where a person is diverted to civil treatment, the defense counsel must recuse himself from all such civil proceedings concerning the defendant, and the court must appoint counsel experienced in civil commitment practice for the defendant unless the defendant requests an opportunity to employ counsel.

Courts (OES):

According to the Office of the Executive Secretary of the Supreme Court ("OES"), the implementation of this bill could potentially require additional payments to attorneys, who would be paid out of the Criminal Fund. The bill calls for attorneys appointed by the criminal court to be compensated in accordance with § 19.2-163, Code of Virginia (compensation of court-appointed counsel). Separate attorneys would also be compensated for representation in the civil portion of the proceeding in accordance with the proposed provision. In such instances where a defendant fails to meet the standards necessary to remain in the expedited diversion to court-ordered treatment, he may be subject to the underlying criminal charges, which would incur the cost of an additional criminal attorney for representation during the renewed criminal misdemeanor charges. The number of defendants who would meet the qualifications for the expedited diversion to court-ordered treatment cannot be estimated.

Therefore, the fiscal impact of this legislation on the court system is indeterminate at this time.

Department of Behavioral Health and Developmental Services (DBHDS):

In addition, the proposed bill would likely impact the Department of Behavioral Health and Developmental Services (DBHDS). Community Services Boards (CSB) would need to hire “diversion case managers” as the bill contains specific duties and requirements for evaluations, creation of service plans, monitoring compliance and communication with the court. While it is unknown how many individuals will be diverted pursuant to this legislation, DBHDS assumes one diversion case manager will be needed for every 25 individuals diverted. The expected cost for each diversion case manager is \$127,673 general fund.

The legislation also requires that all copies of expedited court-ordered treatment orders be sent to the Commissioner of DBHDS, which may require handling of large amounts of data. DBHDS reports that the agency does not have adequate staff to manage the data collection that may be required by this legislation. The Governor’s introduced budget includes \$97,795 general fund for one forensic data analyst position to address current data collection needs stemming from legislation passed in 2022. Assuming this forensic data analyst position remains in the final passage of the budget, DBHDS anticipates this position can take on the responsibility of the data collection requirements of this legislation.

DBHDS reports that it is possible that this legislation will result in some individuals who would otherwise have been committed to state mental health facilities being diverted into court-ordered community-based treatment. DBHDS has identified 149 individuals currently in its forensic population who would meet the criteria set out in this legislation. The cost of institutional care for those individuals is over \$1,000 per person, per day, with a length of stay of 45 – 180 days depending on which misdemeanor they committed. While it is unknown how many, if any, of these individuals would be diverted as a result of this legislation, the diversion of individuals into community care will relieve census pressure at state facilities.

The legislation is silent on who is responsible for the costs of the court-ordered treatment. DBHDS assumes it will be borne by a combination of third-party insurance, Medicaid, private pay, and Community Services Boards funding. The costs will be dependent on the number of individuals ordered into treatment and the types of treatment they receive. DBHDS is unable to provide an estimated cost per person, however the cost of mandatory outpatient treatment may be used as a proxy. The latest data available is from 2011, with a cost of \$3400 per person. Using data from the federal Bureau of Labor Statistics, medical inflation during the last ten years would result in a per person, per month cost of \$4,642 per person (2.9 percent per year). This legislation allows the treatment order to extend up to 180 days. If only the 149 individuals identified in state facilities were to be impacted, the cost could be as much as \$4.1 million per year (149 x \$4,642 x 6 months). However, the population of individuals who may actually be ordered into treatment is likely to be larger. The cost to the Medicaid program is indeterminate.

The Virginia State Police and the Virginia Indigent Defense Commission report that the proposed bill is not expected to have a material fiscal impact on their agency resources. Any fiscal impacts on Commonwealth's Attorneys are not known at this time. The impact on local and regional jails is unknown at this time. Should additional information become available, the fiscal impact statement will be updated as necessary.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Department of Behavioral Health and Developmental Services, Community Services Boards, Department of Medical Assistance Services, Virginia State Police, Commonwealth's Attorneys, local jails, Virginia Indigent Defense Commission

10. Technical Amendment Necessary: No

11. Other Comments: None