

## **Department of Planning and Budget**

### **2023 Fiscal Impact Statement**

**1. Bill Number:** SB1229

**House of Origin**    ☒ Introduced    ☐ Substitute    ☐ Engrossed

**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:**    Obenshain

**3. Committee:** Judiciary

**4. Title:**    Admission to bail; rebuttable presumptions against bail.

**5. Summary:** Current law outlines information that a judicial officer must consider when making a determination on granting bail including (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the commission of the offense; (iii) the weight of the evidence; (iv) the history of the accused or juvenile, including his family ties or involvement in employment, education, or medical, mental health, or substance abuse treatment; (v) his length of residence in, or other ties to, the community; (vi) his record of convictions; (vii) his appearance at court proceedings or flight to avoid prosecution or convictions for failure to appear at court proceedings; and (viii) whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness, juror, victim, or family or household member as defined in § 16.1-228.

Under the provisions of this bill, a judicial officer must presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1 (Sentence of person twice previously convicted of certain violent felonies);
2. An offense for which the maximum sentence is life imprisonment;
3. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction.

For a person who is charged with an offense giving rise to a rebuttable presumption against bail, the bill allows any judicial officer to set or admit such a person to bail according to the law.

For the purpose of rebuttal of the presumption against bail, the bill requires the judicial officer to consider the factors listed in current law and such others as it deems appropriate in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and assure the safety of the public.

The bill provides that when a district court grants bail over the presumption against bail in a matter that is governed by a circumstance as outlined above, and upon notice by the Commonwealth of its appeal of the court's decision, the court must stay execution of such order for so long as reasonably practical for the Commonwealth to obtain an expedited hearing before the circuit court, but in no event more than five days, unless the defendant requests a hearing date outside the five-day limit.

- 6. Budget Amendment Necessary:** Indeterminate
- 7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.
- 8. Fiscal Implications:** This bill may increase jail bed space needs as a result of restricting the circumstances under which bail may be presumed.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2022), the estimated total state support for local jails averaged \$40.39 per inmate, per day in FY 2021.

Information from the Compensation Board is still pending. If further information is received, this impact statement will be revised.

- 9. Specific Agency or Political Subdivisions Affected:** Local and regional jails, Commonwealth's Attorneys, Public Defender's Offices, courts, Compensation Board
- 10. Technical Amendment Necessary:** No
- 11. Other Comments:** None