

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: HB267S1

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|-----------------|--------------------------|--------------|-------------------------------------|------------|--------------------------|-----------|
| House of Origin | <input type="checkbox"/> | Introduced | <input type="checkbox"/> | Substitute | <input type="checkbox"/> | Engrossed |
| Second House | <input type="checkbox"/> | In Committee | <input checked="" type="checkbox"/> | Substitute | <input type="checkbox"/> | Enrolled |

2. Patron: Watts

3. Committee: Senate Committee for Courts of Justice

4. Title: Arrest/prosecution of individual experiencing mental health emergency; assault against law enforcement.

- 5. Summary:** The substitute bill provides that it is an affirmative defense to prosecution of an individual for assault or assault and battery under § 18.2-57 (Assault and battery; penalty) if such individual proves, by a preponderance of the evidence, that at the time of the assault or assault and battery (i) the individual's behaviors were a result of (a) mental illness as defined in § 19.2-271.6 (Evidence of defendant's mental condition admissible; notice to Commonwealth.), (b) an intellectual disability or a developmental disability as defined in § 37.2-100 (Definitions), such as autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, or (c) a neurocognitive disorder, including dementia or (ii) the individual met the criteria for issuance of an emergency custody order pursuant to § 37.2-808 (Emergency custody; issuance and execution of order).

If such individual does not prove by a preponderance of the evidence that at the time of the assault or assault and battery his behaviors were a result of his mental illness, intellectual disability, developmental disability, or neurocognitive disorder but the evidence establishes that his mental illness, intellectual disability, developmental disability, or neurocognitive disorder otherwise contributed to his behaviors, the finder of fact may find the accused guilty of a misdemeanor pursuant to subsection A.

6. Budget Amendment Necessary: No.

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

- 8. Fiscal Implications:** The substitute bill provides that it is an affirmative defense to prosecution of an individual for assault or assault and battery if such individual proves, by a preponderance of the evidence, that at the time of the assault or assault and battery (i) the individual's behaviors were a result of (a) mental illness, (b) an intellectual disability or a developmental disability, such as autism spectrum disorder, or (c) a neurocognitive disorder, including dementia or (ii) the individual met the criteria for issuance of an emergency custody order. The provisions of this bill may have the effect of fewer people being sentenced to jail or prison. At this time, data is not available on the number of people

convicted of offenses who were experiencing a mental health emergency to reliably estimate the impact on jail or prison bed space needs as a result of this proposal.

The impact this bill may have on the Department of Health and Developmental Services (DBHDS) is indeterminate. The fiscal impact this bill may have on state and local law-enforcement agencies is not known at this time. The fiscal impact statement will be updated if additional information is received.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, local and regional jails, law-enforcement agencies, Department of Behavioral Health and Developmental Services, courts.

10. Technical Amendment Necessary: No.

11. Other Comments: None.