

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: SB1383

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

2. Patron: Favola

3. Committee: Judiciary

4. Title: Criminal proceedings; consideration of mental condition and intellectual and developmental disability

5. Summary: Under current law, a judicial officer must consider certain factors in determining, for the purpose of rebuttal of the presumption against bail, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public. These conditions include the physical and mental condition of the person. This bill requires that a diagnosis of an intellectual or developmental disability as defined in § 37.2-100 (defines terms used in Title 37.2 Behavioral Health and Developmental Services) must be considered as part of the mental condition of the person.

Under current law, when a person is tried in circuit court for certain offenses, the court must direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, which is used by the court to determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, and any applicable sentencing guideline worksheets. The bill allows such reports to include any diagnoses of an intellectual or developmental disability as defined in § 37.2-100.

The bill creates § 19.2-271.6, which establishes the admissibility of evidence of a defendant's mental condition and requires notice to the Commonwealth. Under this new section, in any criminal case, evidence concerning the defendant's mental condition at the time of the alleged offense, including expert testimony, must be admitted if such evidence (i) tends to show the defendant did or did not have the specific mental state required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence. Further, if a defendant intends to present expert testimony pursuant to this section, he, or his counsel, is required to give notice in writing to the attorney for the Commonwealth, at least 30 days prior to his trial, of his intention to present such evidence. In the event that such notice is not given, and the person proffers such evidence at his trial as a defense, then the court may in its discretion either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence. The period of any such continuance must not be counted for speedy trial purposes under § 19.2-243 (limitation on prosecution of felony due to lapse of time after finding of probable cause; misdemeanors; exceptions). Nothing in this

section can be construed to affect the requirements for a defense of insanity as established in Chapter 11 (§ 19.2-167 et seq.).

- 6. Budget Amendment Necessary:** Indeterminate
- 7. Fiscal Impact Estimates:** Preliminary. See line 8 below.
- 8. Fiscal Implications:** This bill would permit the admission of evidence concerning a defendant's mental condition at the time of an alleged offense, including expert testimony, if such evidence i) tends to show the defendant did or did not have the specific mental state required for the offense charged and ii) is otherwise admissible pursuant to the general rules of evidence. This provision is likely to have a fiscal impact on the Criminal Fund, as the expert witness would be compensated by the Commonwealth in instances where the defendant has been determined to be indigent. However, the number of cases where an indigent defendant would request such expert testimony in accordance with the bill's provisions cannot be known. Therefore, the annual fiscal impact upon the Criminal Fund cannot be determined at this time.

According to the Department of Corrections, this bill is not expected to have a fiscal impact on probation and parole operations. The impact on the Commonwealth's Attorneys cannot be determined at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Department of Corrections, Commonwealth Attorneys, and Public Defender Offices.
- 10. Technical Amendment Necessary:** No
- 11. Other Comments:** None