## **Department of Planning and Budget 2025 General Assembly Session State Fiscal Impact Statement**

### PUBLISHED: 1/28/2025 3:20 PM

### ORIGINAL

FY2030

\$810,985

At least

\$810,985

\$810,985

\$810,985

**Bill Number:** HB2217 H1 Callsen Patron: **Bill Title:** Court appearance of a person not free on bail.

Bill Summary: Makes various changes to provisions regarding bail hearings, including (i) the appointment of counsel for the accused, (ii) the information provided to counsel for the accused, (iii) a requirement that counsel for the accused be provided with adequate time to confer with the accused prior to any bail hearing, and (iv) the compensation of counsel for the accused.

The bill requires the chief judge in each circuit to create a plan to be completed by November 1, 2025, that establishes the means by which the jurisdiction will meet these requirements.

The remainder of the bill has a delayed effective date of January 1, 2026.

**Budget Amendment Necessary:** Yes Items Impacted: Item 40 Explanation: See below

Fiscal Summary: According to the Office of the Executive Secretary of the Supreme Court (OES), this bill is expected to increase the amounts paid from the Criminal Fund to court-appointed attorneys for representation during the first appearance. The total cost of such representation depends on the amount of time billed by court-appointed counsel for representation at first appearance. According to the Indigent Defense Commission, this bill would require funding and positions for ten paralegal positions.

#### FY2025 FY2026 FY2027 FY2028 FY2029 Agency **Circuit Courts** Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate (Criminal Fund) **General District** Courts (Criminal Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Fund) Juvenile and Domestic Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Relations **District Courts** (Criminal Fund) Indigent Defense \$810,985 \$810,985 \$810,985 \$810,985 Commission At least At least At least At least TOTAL

\$810,985

\$810,985

# **General Fund Expenditure Impact:**

## Department of Planning and Budget 2025 General Assembly Session State Fiscal Impact Statement

### **Position Impact:**

<u>Agency</u>	<u>FY2025</u>	<u>FY2026</u>	<u>FY2027</u>	<u>FY2028</u>	<u>FY2029</u>	<u>FY2030</u>
Indigent Defense		10	10	10	10	10
Commission						
TOTAL		10	10	10	10	10

Fiscal Analysis: OES provided the following information to help assess the potential fiscal impact of this bill.

This bill would require, in jurisdictions having an established public defender office, that counsel be appointed to represent indigent persons who are not free on bail for the potential bail hearing that is to occur on the first day on which the court sits after the person is detained (first appearance). If a private attorney is appointed by the court for representation during the first appearance, they are to be paid at an hourly rate in a total amount not to exceed the fee for court-appointed representation of an adult for a misdemeanor in district court. This fee for representation during the first appearance would be independent of any fees that would accrue for ongoing general representation of the defendant in such case. However, an attorney would be paid a single fee for representation of the defendant during the first appearance when multiple charges are addressed at the same hearing.

This bill would increase the amounts paid from the Criminal Fund to court-appointed attorneys for representation during the first appearance. The Joint Legislative Audit and Review Commission (JLARC) studied the feasibility of providing counsel during the first appearance and included their findings in a report that was filed on November 13, 2023. Based on the research, JLARC determined that roughly 35,000 hearings could be held annually for persons not free on bail in localities with a public defender's office. Defense attorneys for the indigent (public defenders and court-appointed attorneys) represented criminal defendants on 66% of charges involving the possibility of incarceration. It is assumed that the other 34% were self-represented or acquired their own private counsel. Also, in localities that are served by a public defender, 35% of the cases with indigent defendants are represented by court-appointed attorneys.

The total cost of such representation depends on the amount of time billed by court-appointed counsel for representation at first appearance. Court-appointed counsel are currently compensated at a rate set by the OES of \$90 per hour up to the applicable cap of \$330, and may bill for time spent preparing for court, conferring with the client, and traveling to and from the court and/or jail, in addition to time spent during the hearing itself.

The Indigent Defense Commission estimates that ten additional paralegal positions would be needed to assist with cases in small and rural offices. One position in Winchester, VA, would be funded at the northern Virginia (NOVA) rate of \$86,491; nine others would be funded at the non-NOVA rate of \$80,499 each. Total cost for the positions is \$810,985, general fund, annually, which includes salary and benefits.

The impact this bill may have on Commonwealth's Attorneys is not known at this time.

Other: None