

**Department of Planning and Budget**  
**2026 General Assembly Session**  
**State Fiscal Impact Statement**

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PUBLISHED: 1/27/2026 1:31 PM

ORIGINAL

**Bill Number:** SB335

**Patron:** Boysko

**Bill Title:** Affirmative defense or reduced penalty for mental illness, neurocognitive disorder, or intellectual or developmental disability.

**Bill Summary:** Provides an affirmative defense to prosecution of a person for assault or assault and battery against certain specified persons for which the enhanced Class 6 felony and six-month mandatory minimum apply if such person proves, by a preponderance of the evidence, that at the time of the assault or assault and battery (i) the person's behaviors were a result of (a) mental illness or (b) a neurocognitive disorder, including dementia, or an intellectual disability or a developmental disability 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 (ii) the person met the criteria for issuance of an emergency custody order. The bill requires such person or his counsel to give notice in writing to the attorney for the Commonwealth at least 60 days prior to his trial in circuit court, or at least 14 days if the trial date is set within 21 days of his last court appearance, of his intention to present such evidence. Additionally, if 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 such person from presenting such evidence; any such continuance shall not be counted for speedy trial purposes pursuant to relevant law. Lastly, the bill provides that if such person does not prove that 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 such person guilty of a misdemeanor assault or assault and battery. The bill also provides that such affirmative defense shall not be construed to allow an affirmative defense for voluntary intoxication.

**Budget Amendment Necessary:** Yes

**Items Impacted:** 64

**Explanation:** See fiscal analysis

**Fiscal Summary:** According to the Commonwealth's Attorneys' Services Council (CASC), the fiscal impact of the bill is approximately \$86,578 due to additional attorney work hours and the need for expert witness costs.

**General Fund Expenditure Impact:**

<b>Agency</b>	<b>FY2026</b>	<b>FY2027</b>	<b>FY2028</b>	<b>FY2029</b>	<b>FY2030</b>	<b>FY2031</b>
Compensation Board		\$86,578	\$86,578	\$86,578	\$86,578	\$86,578
<b>TOTAL</b>		<b>\$86,578</b>	<b>\$86,578</b>	<b>\$86,578</b>	<b>\$86,578</b>	<b>\$86,578</b>

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**Fiscal Analysis:** According to CASC, the provisions of the bill will require an additional 454 hours of attorney work annually to conduct additional investigations and find and prepare expert witnesses. It is estimated that Commonwealth Attorneys will make approximately \$107 per hour in FY2027 and therefore the additional workload hours is estimated to increase costs by \$48,578. Additional anticipated costs include the compensation for expert witnesses, which is estimated to be \$38,000 annually. Therefore, the total anticipated fiscal impact of the bill is \$86,578. According to CASC, this is a conservative estimate and the fiscal impact of the bill may result in a higher impact on Commonwealth's Attorneys.

**Other:** This bill is identical to HB246.