

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

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REVISED

Bill Number: HB1140

Patron: Cherry

Bill Title: Use of confidential informants in drug-related investigations.

Bill Summary: Directs the Department of Criminal Justice Services to establish a model policy for the use of confidential informants in drug-related investigations and to include in such model policy that (i) no individual currently on probation may serve as a confidential informant without notice to his probation or parole officer, (ii) no individual who has recently violated the terms of his probation or parole shall serve as a confidential informant, (iii) law-enforcement personnel shall obtain approval from the appropriate local attorney for the Commonwealth prior to working with a confidential informant, and (iv) such confidential informant shall not unlawfully use or possess any controlled substances.

Budget Amendment Necessary: No

Items Impacted: 391, 64

Explanation: See fiscal analysis

Fiscal Summary: The proposed legislation has a workload impact on the Department of Criminal Justice Services (DCJS), although as a standalone bill, the fiscal impact is absorbable (see fiscal analysis below).

The impact of this bill on the operations of Commonwealth's Attorneys' offices is anticipated to have a modest increase to Commonwealth's Attorneys' workloads, but the fiscal impact is indeterminate at this time. The original fiscal impact statement issued for this bill assumed that funds appropriated for the Compensation Board could be distributed to local Commonwealth's Attorneys' offices demonstrating the greatest impact by the provisions of the bill, however it has been determined that this is not the case, and an indeterminate amount is now being shown.

Fiscal Analysis: This legislature would require the Department of Criminal Justice Services (DCJS) to develop a model policy governing the use of confidential informants in drug-related investigations. The bill establishes required elements of the model policy, including prohibitions on the use of confidential informants who have recently violated probation or parole, a requirement to notify a probation or parole officer when a supervisee is working as a confidential informant, a mandate to obtain approval from the appropriate Commonwealth's Attorney prior to working with a confidential informant, and a requirement that confidential informants must refrain from the unlawful use or possession of controlled substances.

According to the DCJS, it is expected that the required model policy development can be absorbed with existing resources. If multiple bills pass requiring similar model policy or training development, then the agency would need to hire one additional position to support the increased workload. DCJS estimates that the workload increase of up to four or five similar bills can be absorbed, dependent on subject matter and complexity. The estimated annual cost for one criminal justice analyst position to support training or model policy development and regular updates is \$138,621, including salary and benefits.

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This proposal would increase the interaction that most prosecutors would have regarding the use of confidential informants in criminal investigations. That is primarily because a “confidential informant” is not defined in this amended code section and thus a court would apply the plain meaning of the terms. “Confidential” means “intended for or restricted to the use of a particular person, group or class.” “Informant” means “a person who gives information to another.” Thus, a “confidential informant” is anyone who gives information that is only intended to be used by the recipient of that information. This definition would cover a range of persons, from a criminal defendant who passes information to law enforcement in hopes of a better plea deal to any person who is an anonymous witness to a crime. Under this proposal, a confidential informant is not simply one who conducts controlled purchases of controlled substances. The bill would require prosecutors to learn if any person who wished to remain anonymous was on probation and notify that person’s probation officer.

The Virginia Commonwealth’s Attorneys’ Services Council (CASC) expects that it would take 30 minutes of attorney work, on average, per case involving an informant to verify whether or not the informant was on probation or not, notify the probation office if the informant was on probation, determine if the informant had recent convictions or violations related to the use of controlled substances, and finally approve the use of the informant. CASC estimates that true “confidential informants” (i.e. a person who is receiving a benefit in exchange for his work with law enforcement) have some level of involvement in approximately 10% of felony drug cases as the law exists currently. However, due to the expanded definition of “informant” under this bill, CASC estimates that 20% of cases would feature an “informant” in some capacity (including a citizen calling in with a “tip” to law enforcement). Thus, the average number of informant cases per year would be 2,721 cases. At 2,721 cases per year, with 30 minutes per case, the bill would likely create an additional 1,360 work hours. However, the fiscal impact of the bill on Commonwealth’s Attorneys is indeterminate at this time.

Other: None