

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

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ORIGINAL

Bill Number: SB335ER

Patron: Boysko

Bill Title: Mental illness, neurocognitive disorder, etc.; affirmative defense or reduced penalty.

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 enrolled 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 enrolled 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 Class 1 misdemeanor. The enrolled bill also provides that such affirmative defense shall not be construed to allow an affirmative defense for voluntary intoxication.

Budget Amendment Necessary: No

Items Impacted: N/A

Explanation: See fiscal analysis

Fiscal Summary: The impact on state agency operations is indeterminate.

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. However, it is DPB's assessment that it is unclear how many cases will be impacted by the provisions of the bill and therefore, the fiscal impact is indeterminate.

Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both. There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the

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state. The Commonwealth currently pays localities \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2025), the estimated total state support for local jails averaged \$58.25 per inmate, per day in FY 2024.

Other: None.