

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: HB824

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

2. Patron: Cousins

3. Committee: Courts of Justice

4. Title: Abolition of fees; legal representation of indigent defendant.

5. Summary: This bill eliminates the fees assessed for the cost of court-appointed counsel or public defender representation for indigent persons or, in cases of delinquency when a child's parent is determined to be indigent. Currently, the cost of such legal representation is paid by the Commonwealth for the violation of a state code section and assessed against the defendant.

6. Budget Amendment Necessary: Front page general fund revenues may need to be adjusted. See last paragraph under Item 8 below.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: Currently, in a proceeding in which the court appoints guardian ad litem to represent a child, court costs are reimbursed to the Commonwealth in an amount not to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. However, no party whom the court determines to be indigent is required to pay reimbursement except where the court finds good cause to do so. The proposed legislation eliminates the good cause findings by the court. According to the Office of the Executive Secretary of the Supreme Court (OES), payments received for these fees would be eliminated. However, the OES reports that it does not have a way to identify fees that have been specifically assessed for representation of criminal or delinquency matters. Therefore, the impact of this provision on the state and potentially localities cannot be determined.

The bill also amends § 19.2-163 related to compensation of court-appointed counsel by removing the requirement that if the defendant is convicted, the amount allowed by the court to the attorney appointed to defend him be taxed against the defendant as a part of the costs of prosecution and, if collected, to be paid to the Commonwealth, or as appropriate, the county, city or town. It also provides that in a case in which an attorney from a public defender office represents an indigent person charged with an offense and such person is convicted, the sum that would have been allowed a court-appointed attorney as compensation and as reasonable expenses are not to be taxed against the person defended as a part of the costs of the prosecution, and collections will not be made. Currently, such collections are

paid to the Commonwealth or the appropriate locality. However, the impact of this provision on the state and to the localities cannot be determined.

The bill also amends § 17.1-275.5 which requires the clerk of the court to assess certain fees when judgement is in favor of the Commonwealth, to include any amount paid by the Commonwealth for legal representation of the defendant. The bill removes the requirement that the individual reimburse the Commonwealth for any amount paid for legal representation. It further provides that no fee will be assessed by the clerk to the defendant for any amount paid by the Commonwealth for legal representation of the defendant if the court has determined such defendant to be indigent. According to OES, between calendar years 2019-2023, the Commonwealth assessed an average of \$33.7 million annually against defendants for the cost their legal representation for criminal violations. During the same timeframe, an average of \$12.1 million in payments were collected annually for the assessed amounts. It is estimated that an amount similar to this collection would be eliminated from various state general fund or local deposits. The cost of representation of a defendant charged with the violation of a local ordinance is charged against the locality and, if the defendant is convicted, the costs assessed against the defendant would be paid to the locality.

The proposed bill will not have a fiscal impact on the Criminal Fund.

9. Specific Agency or Political Subdivisions Affected: Courts, Circuit Court Clerks, localities, Commonwealth of Virginia (general fund)

10. Technical Amendment Necessary: No

11. Other Comments: None