

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB811

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

2. Patron: Williams

3. Committee: Courts of Justice

4. Title: Admission to bail; rebuttable presumptions against bail.

5. Summary: Current law outlines information that a judicial officer must consider when making a determination on granting bail including (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the commission of the offense; (iii) the weight of the evidence; (iv) the history of the accused or juvenile, including his family ties or involvement in employment, education, or medical, mental health, or substance abuse treatment; (v) his length of residence in, or other ties to, the community; (vi) his record of convictions; (vii) his appearance at court proceedings or flight to avoid prosecution or convictions for failure to appear at court proceedings; and (viii) whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness, juror, victim, or family or household member as defined in § 16.1-228.

Under the provisions of this bill, a judicial officer must presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1 (Sentence of person twice previously convicted of certain violent felonies);
2. An offense for which the maximum sentence is life imprisonment;
3. A violation of § 18.2-248, 18.2-248.01, 18.2-255, or 18.2-255.2, which prohibit the manufacture, distribution, and transportation of certain controlled substances, involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as formerly defined in § 18.2-248;
4. A violation of § 18.2-308.1, 18.2-308.2, or 18.2-308.4, which relate to the possession of firearms and other weapons, and which relates to a firearm and provides for a mandatory minimum sentence;
5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of the Commonwealth or substantially similar laws of the United States;
6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;

7. An offense listed in subsection B of § 18.2-67.5:2 (Punishment upon conviction of certain subsequent felony sexual assault) and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;
8. A violation of § 18.2-374.1 (Production, publication, sale, financing, etc., of child pornography; presumption as to age) or 18.2-374.3 (Use of communications systems to facilitate certain offenses involving children), where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person;
9. A violation of § 18.2-46.2 or 18.2-46.3, which relate to certain street gang activities, or 18.2-46.5, or 18.2-46.7, which relate to certain terrorism and bioterrorism activities;
10. A violation of § 18.2-36.1, 18.2-51.4, 18.2-266, or 46.2-341.24, which pertain to manslaughter and maiming resulting from driving while intoxicated and prohibit driving while intoxicated in general, and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction;
11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4, which establish penalties for violating protective orders, or a substantially similar offense under the laws of any state or the United States;
12. A violation of subsection B of § 18.2-57.2, which establishes a felony penalty when a person has been previously convicted of two offenses of certain assault and battery charges against a family or household member;
13. A violation of subsection C of § 18.2-460, which establishes a felony penalty for obstructing or impeding the administration of justice, charging the use of threats of bodily harm or force to knowingly attempt to intimidate or impede a witness;
14. A violation of § 18.2-51.6 (Strangulation of another; penalty) if the alleged victim is a family or household member as defined in § 16.1-228; or
15. A violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, which pertain to human trafficking, receiving money from earning of prostitutes or commercial sex trafficking.

The bill requires the judicial officer to presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is being arrested pursuant to § 19.2-81.6 (Authority of law-enforcement officers to arrest illegal aliens). The bill creates § 19.2-120.2, which governs the presumption of no bail for illegal aliens charged with certain crimes.

The bill requires that a judicial officer who is a magistrate, clerk, or deputy clerk of a district court or circuit court must not admit to bail, that is not set by a judge, any person who is charged with an offense giving rise to a rebuttable presumption against bail without the concurrence of an attorney for the Commonwealth. For a person who is charged with an offense giving rise to a rebuttable presumption against bail, any judge may set or admit such

person to bail in accordance with this section after notice and an opportunity to be heard has been provided to the attorney for the Commonwealth.

The bill also requires the court to consider specified factors when determining whether the presumption against bail has been rebutted including the nature and circumstances of the offense charged; the history and characteristics of the person; and the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

The bill provides that when a district court grants bail over the presumption against bail in a matter that is governed by a circumstance as outlined above, and upon notice by the Commonwealth of its appeal of the court's decision, the court must stay execution of such order for so long as reasonably practical for the Commonwealth to obtain an expedited hearing before the circuit court, but in no event more than five days, unless the defendant requests a hearing date outside the five-day limit.

- 6. Budget Amendment Necessary:** Indeterminate
- 7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.
- 8. Fiscal Implications:** This bill reinstates several provisions relating to the issuance of bail that were in place before July 1, 2021. The bill may increase jail bed space needs as a result of restricting the circumstances under which bail may be presumed.

Although the number of offenders who would be denied bail under the provisions of this bill cannot be known for certain, data provided by the Compensation Board shows that during the first six months of FY 2022, after the current law became effective, there were 8,482 individuals who had at least one offense under a statute in the bill that would now result in a presumptive denial of bail (annualized, this figure would be 16,964 individuals). The Compensation Board estimated that, based on analysis of the length of stay for pre-trial individuals, the added average length of stay for returning to a presumptive denial of bail would be 47.54 days. This data was provided as a reference point only; a precise estimate of the bill's impact on local (jail) bed space is not known.

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 state. The Commonwealth currently pays the localities \$4.00 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 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

The bill also establishes the presumption of no bail for illegal aliens charged with certain crimes. The Compensation Board reported that there is not sufficient data to evaluate the impact this provision may have.

The impact this bill may have on Commonwealth's Attorneys and the courts is not known at this time. If further information is received, this impact statement will be revised.

9. Specific Agency or Political Subdivisions Affected: Local and regional jails, Commonwealth's Attorneys, courts

10. Technical Amendment Necessary: No

11. Other Comments: None