

Senate Bill 2046
House Judiciary Committee
Testimony Presented by Sara Behrens
March 1, 2023

Good morning Chair Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of Senate Bill 2046. Section 12.1-04-08 was part of a re-write done last session, however, we come to you now with amendments to remedy some issues that have arisen when implementing the statute as currently written. This bill came out of a subcommittee on mental health.

Subsection 1 of 12.1-04-08 is new language to the statute. There have been a large number of misdemeanor defendants being sent to the State Hospital to assess fitness to proceed. When there are questions regarding the defendant's fitness to proceed in relatively minor misdemeanor cases, such as driving under suspension, the best plan of action is to dismiss the case and save State Hospital resources for defendants charged with higher level offenses.

Page 1, lines 7-10, provides that class B misdemeanors will be dismissed without prejudice when there is evidence the defendant lacks fitness to proceed. However, the subcommittee recognized that there are some class B misdemeanors that should be exempted. Lines 9-10 provide that class B misdemeanors under chapter 12.-17 will not be dismissed. Chapter 12.1-17 encompasses offenses such as simple assault, domestic violence, and harassment.

Subsection 2 of section 12.1-04-08, makes changes to the length of time prosecution is suspended when fitness to proceed is in question. Currently, a felony proceeding is suspended for up to 180 days with the possibility of a 365 day extension. All misdemeanor proceedings are suspended for up to the maximum length of time of imprisonment possible for the most serious

offense. This has created the odd situation of a class A felony proceeding being suspended for 180 days and a class A misdemeanor being suspended for 365 days. The changes made on Page 1, lines 11-18, will provide the same suspension time for both A misdemeanor proceedings and felony proceedings. Page 1, lines 20-23, is amended to include only those B misdemeanors under chapter 12.1-17, which will be suspended for up to the maximum period of imprisonment possible for the most severe offense charged.

Subsection 3 of 12.1-04-08 allows for the court to have more flexibility in ordering alternative treatment. The subcommittee did not want to simply release these individuals with no assistance, and Page 2, lines 5-13 provides the court can make a referral for appropriate services. On Page 2, line 13 adds “any other services the court deems appropriate.” This is because new treatments become available frequently. The Supreme Court will make a court rule in which alternative treatments can be provided. When a new program becomes available, the rule can quickly be updated.

These amendments will allow the State Hospital to dedicate resources to those higher level offenses where fitness to proceed is questioned. We believe the amendments made to the length of suspension of proceedings also makes the statute work more logically. Finally, the flexibility provided to the court in ordering alternative treatment will assist in getting defendants the help they need more effectively. We thank you for your consideration and urge a do pass.