

Department of Planning and Budget
2025 General Assembly Session
State Fiscal Impact Statement

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ORIGINAL

Bill Number: HB2555 ER **Patron:** Henson
Bill Title: Modification of sentence for marijuana-related offenses.

Bill Summary: Creates a process by which persons convicted of certain felony offenses involving the possession, manufacture, selling, giving, distribution, transportation, or delivery of marijuana committed prior to July 1, 2021, who remain incarcerated or on community supervision on July 1, 2025, receive an automatic hearing to consider modification of such person's sentence.

The bill provides that any eligible person may file a petition for the assistance of counsel and a statement of indigency with the court on a form provided by the Supreme Court of Virginia. The bill further provides that if such person was found to be indigent at his original sentencing, he shall be entitled to assistance of counsel for the hearing on modification of his sentence without the filing of such petition. The bill prohibits fees for filing a petition.

The bill directs, upon a hearing for sentence modification, the court to consider that marijuana has been legalized, and requires the court to reduce, including a reduction to time served, vacate, or otherwise modify the person's sentence, including removing such person from community supervision, unless the Commonwealth demonstrates it would not be compatible with the public interest to do so. Any modification of sentence may not exceed the original term imposed by the court.

The bill requires the circuit court to decide whether to modify a sentence within 30 days following the sentence modification hearing. The bill directs the court to file a written explanation if modification of sentence is denied.

The bill requires that, following the entry of an order to modify a sentence, the clerk of the circuit court must forward a copy of the order to the Virginia Criminal Sentencing Commission, the Department of State Police, and the state or local correctional facility or secure facility where the petitioner is incarcerated within five days.

The bill contains an enactment clause requiring that, on or before September 1, 2025, the Department of Corrections, sheriff of a local jail, regional director of a regional jail, and the Department of Juvenile Justice, must determine which individuals currently incarcerated in such state correctional facility, local correctional facility, or secure facility, or placed on community supervision, respectively, meet the criteria for a hearing on the modification of sentence as set forth in proposed legislation, and must (i) provide an electronic list of such individuals to the clerk of each circuit court in the jurisdiction where the individual was sentenced and (ii) notify all such individuals that they may be eligible for modification of their sentence, a hearing will be scheduled for such determination, and that they may file a petition for assistance of counsel and a statement of indigency.

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The bill contains an enactment clause requiring that, within 30 days of receiving the electronic list provided under the second enactment clause, the clerk of each circuit court must notify the chief judge of that circuit court who must then set a hearing within the timeframes required pursuant to the proposed legislation.

The provisions of this bill sunset on July 1, 2028.

Budget Amendment Necessary: Yes **Items Impacted:** Item 390
Explanation: See below

Fiscal Summary: The total fiscal impact this bill may have on state agencies depends on the number of and extent to which eligible sentences are modified. However, the Department of Corrections (DOC) reports the need for temporary contractors to address workload issues and the Office of the Executive Secretary of the Supreme Court (OES) reports an expected fiscal impact on the Criminal Fund resulting from court-appointed counsel. According to the Virginia State Police (VSP), this bill is not expected to have a material fiscal impact on agency operations.

General Fund Expenditure Impact:

Agency	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
Department of Corrections		\$106,000				
Criminal Fund		Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate
Courts positions		Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate
TOTAL		At least \$106,000	Indeterminate	Indeterminate	Indeterminate	Indeterminate

Fiscal Analysis: Any fiscal impact this proposal would have on jail bedspace, prison bedspace, or on DOC's Community Corrections population is dependent on the actions the courts take on petitions. Based on data as of December 31, 2024, the Department of Corrections (DOC) estimates that there were 334 inmates and 1,134 probationers/parolees who would be eligible for sentence modifications under the provisions of this bill. The number of eligible inmates who are incarcerated in local and regional jails is not known at this time. However, since the bill limits eligibility to those who were convicted of certain felony offenses before July 1, 2021, this may be a small number.

Impacts on agency operations are provided below:

Department of Corrections (DOC)

According to DOC, determining inmate eligibility, developing the required lists for circuit courts, and notifying inmates and probationers/parolees is expected to be staff intensive. DOC believes that the additional workload could be managed using temporary contractual services or hourly wage employees. The agency estimates the one-time cost of these contractual services at \$106,000 general fund.

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Courts

The bill requires the circuit court that entered the original judgment or order to schedule a hearing to consider modifying the sentence for anyone eligible under the provisions of the bill by January 1, 2026. Based on data provided by DOC, this would require 1,468 sentence modification hearings. This number may be higher if there are eligible inmates who are incarcerated in local or regional jails. OES reports that any court-appointed counsel for these hearings, as allowed by the bill, would be compensated at \$1,692 for their representation. The fiscal impact of this provision would have on the Criminal Fund depends on the number of people who were declared indigent.

OES reports that this bill is also expected to increase the workload of circuit court judges, who would be tasked with adjudicating petitions for modification. The added judicial workload is indeterminate but is expected to be significant.

Although the bill specifies that an appeal is permitted only when the circuit court's decision is "contrary to law," the Court of Appeals must address even appeals that are not meritorious, defaulted, or waived. Because of this, OES reports that the Court of Appeals is likely to need additional Deputy Clerk positions and additional Staff Attorney positions in the future to adequately handle this additional workload. The impact to the Criminal Fund for appointed counsel representation for appeals heard within the Virginia Court of Appeals, is estimated at \$1,900 per appeal.

Unsuccessful petitioners also would be permitted a further appeal to the Supreme Court. Petitioners also could use writs of habeas corpus to challenge circuit court decisions regarding sentence modification. As these petitioners already will have received an adverse ruling from the circuit court, it is assumed most will file their habeas petitions under the original jurisdiction of the Supreme Court rather than in the circuit court. OES reports that this may impact the workload of the Supreme Court, which will likely require additional clerk positions and additional staff attorney positions in the future. The impact to the Criminal Fund for appointed counsel representation during such Supreme Court of Virginia appeals, at an estimated \$1,300 per appeal.

Virginia State Police (VSP)

The Virginia State Police reports that although this bill is expected to temporarily increase the workload associated with recording modified sentences in criminal records histories, the agency can manually update the information and does not expect a fiscal impact. However, VSP's ability to absorb this cost will be dependent on the number of sentencing modifications granted by the courts.

Other Agencies

The Office of Attorney General reports that this bill is not expected to have a fiscal impact on agency operations.

The fiscal impact this bill may have on Commonwealth's Attorneys will depend on the number and complexity of the petitions received and is, therefore, not known at this time.

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The fiscal impact this bill may have on local and regional jails is also not known at this time.

Other: None