

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

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ORIGINAL

Substitute bill HB26H1

Patron: Henson

Number:

Substitute bill Marijuana-related offenses; modification of sentence, sunset.

Title:

Substitute bill Summary: The substitute 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, 2026, may receive an automatic hearing to consider modification of such person's sentence. The provisions of this substitute bill sunset on July 1, 2029.

Budget Amendment Necessary: Yes

Items Impacted: 28, 32, 33, 64, 50, 390

Explanation: See Fiscal Summary below.

Fiscal Summary:

According to the Office of the Executive Secretary (OES) of the Supreme Court of Virginia, the estimated impact to the Criminal Fund for FY2027 would be \$968,274.

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

The substitute bill would also allow an appeal of the circuit court's decision to the Court of Appeals. The number of appeals is difficult to predict and thus the fiscal impact is indeterminate. The OES estimates the Court of Appeals may need up to three additional Deputy Clerk positions and three additional Staff Attorney positions in the future to adequately handle this additional workload. The timing of hiring and cost for these additional positions is unknown at this time. The impact to the Criminal Fund for appointed counsel representation for appeals heard within the Virginia Court of Appeals, at an estimated \$1,900 per appeal, is estimated to be \$330,600 in FY 2027.

Unsuccessful petitioners also would be permitted a further appeal to the Supreme Court. It is estimated the Supreme Court may need one additional Deputy Clerk, one additional Orders and Admissions Clerk, and one additional Staff Attorney in the future to adequately address this additional workload. The timing of hiring and cost for these additional positions is unknown at this time. The impact to the Criminal Fund for appointed counsel representation during such Supreme Court of Virginia appeals, at an estimated \$1,300 per appeal, is estimated to be \$113,100 in FY 2027.

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The Department of Corrections (DOC) indicates that it cannot absorb the additional responsibilities from this substitute bill due to the requirement to generate individualized, court specific lists within a fixed statutory timeline. To ensure compliance the Department will rely on temporary wage employees to support eligibility list development and notification management. The Department estimates that one-time funding of \$151,627, including FICA, will be required in FY27 for four temporary wage employees. Ongoing employee support is not expected beyond the FY27 fiscal year.

The Office of the Attorney General (OAG) estimates it will need 0.5 additional lawyers and 0.5 secretaries to meet the requirements of this substitute bill. The estimated total cost would be \$124,819.

According to the Commonwealth's Attorneys' Services Council (CASC), the substitute bill is estimated to cost an additional \$227,335 to address anticipated increases in personnel workloads.

General Fund Expenditure Impact:

<u>Agency</u>	<u>FY2026</u>	<u>FY2027</u>	<u>FY2028</u>	<u>FY2029</u>	<u>FY2030</u>	<u>FY2031</u>
Circuit Court		\$968,274				
Court of Appeals		\$330,600				
Supreme Court		\$113,100				
Department of Corrections		\$151,627				
Office of the Attorney General		\$124,819				
Commonwealth's Attorneys' Services Council		\$227,335				
TOTAL		\$1,915,755				

Position Impact:

<u>Agency</u>	<u>FY2026</u>	<u>FY2027</u>	<u>FY2028</u>	<u>FY2029</u>	<u>FY2030</u>	<u>FY2031</u>
Office of the Attorney General		1				
TOTAL		1				

Fiscal Analysis:

According to the Office of the Executive Secretary (OES) of the Supreme Court of Virginia, the legislation provides that a modification hearing shall be scheduled for currently incarcerated persons, or persons currently under community supervision, who were either i) solely convicted of a marijuana felony committed prior to July 1, 2021, or ii) convicted of a marijuana felony committed prior to July 1, 2021 and on the date of such conviction was also convicted of another offense other than an act of violence as defined in § 19.2-297.1. The Department of Corrections (DOC) provided information to the OES indicating that there are currently 314

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incarcerated individuals, and 1,043 individuals under community supervision, where at least one or more marijuana felony convictions are associated with their current sentence/supervision. For those convictions, 66 incarcerated persons had a violent § 19.2-297.1 felony conviction on the same date as their marijuana felony conviction, as did 130 of the individuals under community supervision, and thus would be exempted from modification of their sentence under this legislation. Therefore, circuit courts would be required to schedule a sentence modification hearing for 1,161 individuals. The hearing would have to be scheduled by April 1, 2027, and the incarcerated person, or person subject to supervision, would be able to petition for the assistance of counsel based upon indigency. Assuming that all such petitions for counsel are filed and granted, and that counsel are compensated at \$834 for their representation, the estimated impact to the Criminal Fund for FY 2027 would be \$968,274.

This substitute bill will also increase the workload of circuit court judges, who would be tasked with adjudicating the petitions for modification. The added judicial workload is indeterminate but is expected to be significant. Any increased workload for circuit court judges would be reflected within any future judicial workload assessments; the results of which would also identify the necessary additional resources/personnel.

The substitute bill would also allow an appeal of the circuit court's decision to the Court of Appeals. The number of appeals is difficult to predict and thus the fiscal impact is indeterminate. However, assuming that 15% of those who seek relief under this procedure appeal an adverse ruling, the Court of Appeals will receive approximately 174 additional appeals in FY 2027. Although the substitute 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. Applying that percentage to the Court's case processing estimates, the Court of Appeals may need up to three additional Deputy Clerk positions and three additional Staff Attorney positions in the future to adequately handle this additional workload, however the need for these positions is indeterminate at this time. The timing of hiring and cost of those positions is unknown at this time. The impact to the Criminal Fund for appointed counsel representation for appeals heard within the Virginia Court of Appeals, at an estimated \$1,900 per appeal, is estimated to be \$330,600 in FY 2027.

Unsuccessful petitioners also would be permitted a further appeal to the Supreme Court. Of the 191 appeals to the Court of Appeals, it is estimated that approximately fifty percent will 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. It is estimated that ten percent of petitioners who are aggrieved by adverse rulings on their sentence modification petitions will file habeas petitions in the Supreme Court. Applying these percentages to the Court's current capacity and case processing estimates, the Supreme Court may need one additional Deputy Clerk, one additional Orders and Admissions Clerk, and one additional Staff Attorney in the future to adequately address this additional workload, however the need for these positions is indeterminate at this time. The timing of hiring and cost of those positions is unknown at this time. The impact to the

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Criminal Fund for appointed counsel representation during such Supreme Court of Virginia appeals, at an estimated \$1,300 per appeal, is estimated to be \$113,100 in FY 2027.

The fiscal impact to the Department of Corrections (DOC) is primarily driven by the substitute bill's requirement to provide an electronic list of individuals that meet the criteria to the clerk of each circuit court in the "jurisdiction where the individual was sentenced", then "notify all such individuals" about potential eligibility and related hearing/counsel processes. The process increases administrative workload by requiring the development and validation of electronic eligibility lists, matching each eligible individual to the correct sentencing court, generating and transmitting court-specific lists, in addition to managing notifications and related follow-up activities.

DOC indicates that it cannot absorb with existing resources the additional responsibilities from this substitute bill due to the requirement to generate individualized, court specific lists within a fixed statutory timeline. To ensure compliance the Department will rely on temporary wage employees to support eligibility list development and notification management. The Department estimates that one-time funding of \$151,627, including FICA, will be required in FY27 for four temporary wage employees. Ongoing employee support is not expected beyond the FY27 fiscal year.

The Office of the Attorney General (OAG) indicates that given the limited nature of this (marijuana cases only and then only certain ones) and the likely short duration, they estimate they will need 0.5 additional lawyers and 0.5 secretaries to meet the requirements of this substitute bill. The estimated total cost would be \$124,819. This includes half the annual salary of an Assistant Attorney General (\$67,883), half the annual salary of a secretary (\$46,936), and indirect costs of \$10,000 (including training, equipment, etc).

According to the Commonwealth's Attorneys' Services Council (CASC), the substitute bill is estimated to cost an additional \$227,335 to address anticipated increases in workloads for Commonwealth Attorneys.

The Department of Juvenile Justice (DJJ) and the Virginia State Police (VSP) report no fiscal impact on their agencies.

Other: Related bill is SB62.