

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. **Bill Number:** SB427 S3

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

2. **Patron:** Deeds

3. **Committee:** Finance and Appropriations

4. **Title:** Petition for modification of a sentence; eligibility; procedures.

5. **Summary:** This bill provides a process for a person serving a sentence for a conviction or convictions outlined in the bill who remains incarcerated in a state or local correctional facility or secure facility and meets certain criteria to petition the circuit court that entered the original judgment or order for a modification of their sentence. The bill outlines eligibility criteria that include types of convictions, time served, and the number of past petitions filed for sentence modification.

The bill requires that the Commonwealth be made party to the proceeding and requires the petitioner to provide a copy of the petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth of the city or county in which the petition is filed. The bill sets timelines for Commonwealth's Attorneys to answer petitions. The bill sets timelines for the court to conduct a hearing on a petition. The bill requires the Commonwealth's Attorney to make reasonable efforts to notify victims or to file a written pleading outlining efforts made to notify the victim.

The bill requires that, following the entry of an order to modify a sentence pursuant to the provisions of this bill, the clerk of the circuit court must forward a copy of such order to be 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 requires that the petitioner must receive credit for any time served in any local or state correctional facility or secure facility if a sentence is modified pursuant to the provisions of this bill.

6. **Budget Amendment Necessary:** See Item 8 below.

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

8. **Fiscal Implications:** For anyone who is eligible under the provisions of the bill and petitions for a sentence modification, the bill gives the court that entered the original judgment discretion over whether to grant a hearing. The bill provides that the court may (i) suspend the unserved portion of such sentence or run the unserved portion of such sentence concurrently with another sentence, (ii) place such person on probation for such time as the court shall determine, or (iii) otherwise modify the sentence imposed. The bill also allows the

court to summarily dismiss the petition if the petitioner fails to state good cause to modify his sentence but must provide a written explanation of the reason for the dismissal.

According to the Department of Corrections (DOC), as of December 31, 2023, there were 7,910 state-responsible (SR) inmates who meet the length of stay criteria set forth in this bill and would be eligible to file a petition for sentence modification. Any impact on SR bed space or on the community corrections population would depend on how many these inmates file a petition and on the decisions of the courts hearing these petitions.

The bill requires that, whenever a person becomes eligible to petition for modification of a sentence pursuant to this section, DOC must notify such person of his eligibility and provide the following to the inmate within 30 days of such person becoming eligible: a copy of this provisions of the law; the form for the fillable petition provided by the Supreme Court of Virginia, and all information necessary to complete such form. The notification must be provided to each eligible individual in his primary language. Upon request of the petitioner or counsel for the petitioner, the DOC must provide any records, electronic and paper, associated with the petitioner, without cost, including sentencing orders, program enrollment and completion, security status, case plan documentation, risk assessment data and evaluation, medical records, and any other relevant records. A copy of any such records provided must also be provided to the court and the attorney for the Commonwealth.

The bill requires the court to consider certain factors when determining whether there is good cause to modify a petitioner's sentence, including compliance with the petitioner's case plan, as described by DOC operating procedures, during the five years preceding the filing of the petition. DOC reports that the agency does not have a system in place to manage the notification process or the five-year report on inmate behavior required by this bill and is assessing whether it would be possible to modify CORIS, which is the offender management system used by the agency. The cost of such modifications, if this is a viable solution, is not known at this time. DOC also reports that the agency may need additional positions in its Court and Legal division to manage inmate records, especially to manage the volume of offenders who would be eligible immediately upon passage of the bill. DOC did not provide an estimate for the number of positions that may be needed but reported that each additional position would cost \$75,219 general fund (salary and benefits). DOC reports that if additional casework counselors are needed to manually track and report inmate behavior, each additional position would cost \$76,065 general fund (salary and benefits).

According to the Office of Attorney General, this bill is expected to increase the workload of the office's Correctional Litigation and Criminal Appeals sections. The number of cases that would be referred to the OAG is unknown at this time. To the extent the bill has a litigation impact on the OAG, the general fund cost for each senior staff attorney is \$172,297 per year and each associate staff attorney is \$140,752 per year. Each paralegal position would cost \$100,178 per year, each legal secretary would cost \$86,965 per year, and each administrative position would cost \$104,152 per year. Costs include salary and benefits.

The 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. The impact this

bill may have on courts and the Criminal Fund is not known at this time. If additional information becomes available, this statement will be revised.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, local and regional jails, Office of Attorney General, Commonwealth's Attorneys, Virginia Indigent Defense Commission, Virginia Criminal Sentencing Commission, Department of State Police, Courts

10. Technical Amendment Necessary: No

11. Other Comments: None