

## Department of Planning and Budget 2022 Fiscal Impact Statement

**1. Bill Number:** SB518

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

**2. Patron:** Lucas

**3. Committee:** Judiciary

**4. Title:** Modification of sentence for marijuana-related offenses.

**5. Summary:** This bill creates a process for persons convicted of certain felony marijuana-related offenses committed prior to July 1, 2021, and who remain incarcerated or on community supervision on July 1, 2022, to receive an automatic hearing to consider modification of his sentence. The bill sets deadlines by which hearings must be scheduled.

The bill allows persons convicted of any felony offense committed prior to July 1, 2021, who remain incarcerated or on community supervision on July 1, 2022, and whose sentence may have been enhanced because of a previous felony marijuana offense or without the involvement of marijuana such felony offense conviction or felony sentence enhancement would not have been possible, to petition the circuit court for modification of his sentence. The bill sets requirements for the petition process, including requirements for action that must be taken by the Commonwealth's Attorney. The bill requires such petition to be filed by July 1, 2024.

The bill allows those eligible for modification of sentence under the proposed legislation to petition for the assistance of counsel and a statement of indigency with the court. The bill provides that, if such person was found to be indigent at his original sentencing, he is entitled to assistance of counsel for the hearing on modification of his sentence without the filing of such petition and that no fee can be charged. The bill directs the court to consider that marijuana has been legalized and 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 make a decision on modifying a sentence within 30 days following the sentence modification hearing. If modification of a sentence is denied, the court must file with the record of the case a written explanation for the denial and must provide a copy of such written explanation to the person whose sentence was considered for modification, his attorney if he is represented, and to the attorney for the Commonwealth.

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 requires that, on or before September 1, 2022, 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.

The bill contains an enactment clause requiring that, within 30 days of receiving the electronic list provided under the second enactment of this act, the clerk of each circuit court must notify the chief judge of that circuit court who must subsequently set a hearing within the timeframes required pursuant to the proposed legislation for each individual to determine whether to modify such individual's sentence.

The provisions of this bill expire on July 1, 2025.

**6. Budget Amendment Necessary:** Indeterminate

- 8. Fiscal Implications:** The Virginia Criminal Sentencing Commission (VCSC) provided FY 2021 conviction data where the most serious offense was related to marijuana, broken down by statute affected by this bill. However, VCSC data included the caveat that due to the short sentences for most marijuana offenders, the number of such offenders incarcerated at any one time would be less than the cumulative number of offenders sentenced over the course of the year. VCSC does not have data showing the number of people that are currently incarcerated for such offenses. According to the Department of Corrections (DOC), there were ten inmates who were incarcerated at the end of August 2021 whose most serious offense was related to marijuana. DOC reports that, because of the small number of offenders affected, this bill is not expected to have a fiscal impact on agency operations. The number of inmates being held in jails for marijuana offenses is not known at this time.

The Department of State Police (VSP) reports that this bill will require modifying sentencing information in the Computerized Criminal History (CCH) system and that, depending on the number of sentence modifications granted, additional staff may be needed. VSP estimates the cost for each contracted Administrative and Office Specialist at \$25 per hour, which equates to approximately \$62,400 for a full-time position. VSP reports that information technology hardware, at a cost of \$2,966 per year may also be needed. It is expected that VSP could absorb these one-time costs.

The bill sets deadlines for a Commonwealth's Attorney to respond to petitions received for sentence modifications and requires a Commonwealth's Attorney to make reasonable efforts

to notify any victim, as defined in § 19.2-11.01 (governs crime victim and witness rights), of any hearing conducted by the court. The impact these requirements may have on Commonwealth's Attorneys is not known at this time.

The impact this bill may have on local and regional jails, courts, and the Department of Juvenile Justice is not known at this time. If further information is received, this impact statement will be revised.

**9. Specific Agency or Political Subdivisions Affected:** Department of corrections, local and regional jails, Department of Juvenile Justice, courts, Commonwealth's Attorneys, Public Defenders, Indigent Defense Commission

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None