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HOUSE BILL NO. 1348

Offered January 21, 2022

A *BILL to amend the Code of Virginia by adding in Chapter 25 of Title 8.01 an article numbered 4, consisting of sections numbered 8.01-668.1 through 8.01-668.6, relating to writ of post-conviction relief for marijuana-related offenses.*

Patron—Coyner

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 25 of Title 8.01 an article numbered 4, consisting of sections numbered 8.01-668.1 through 8.01-668.6, as follows:

Article 4.**Writ of Post-Conviction Relief for Cannabis Offenses.****§ 8.01-668.1. Definitions.**

As used in this article, unless the context requires a different meaning:

"Person convicted of a qualifying offense" means any person convicted of a qualifying offense in the Commonwealth who was sentenced to a local correctional facility or to the Department of Corrections or placed on community supervision as defined in § 53.1-1 for such conviction and who remains incarcerated in a state or local correctional facility or secure facility, as defined in § 16.1-228, serving the sentence for such conviction or a combination of such convictions or remains on community supervision as defined in § 53.1-1 for such conviction or a combination of such convictions on July 1, 2022.

"Qualifying offense" means a conviction of a felony offense that relates to marijuana in violation of § 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-250, 18.2-255, 18.2-255.2, 18.2-256, 18.2-257, 18.2-258, 18.2-258.02, 18.2-258.1, 18.2-265.3, or 18.2-474.1 and was committed prior to July 1, 2021.

§ 8.01-668.2. Issuance of writ of post-conviction relief for persons convicted of a qualifying offense.

A. Notwithstanding any other provision of law or rule of court, upon a petition of a person who was convicted of a qualifying offense, the circuit court of the county or city in which the conviction was entered shall have the authority to issue writs of post-conviction relief under this article.

B. The Rules of Supreme Court of Virginia governing practice and procedures in civil actions shall be applicable to proceedings under this article.

C. The circuit court shall have the authority to conduct hearings on petitions for writs of post-conviction relief.

D. Any petitioner denied by the decision of the circuit court may appeal the decision to the Supreme Court of Virginia.

§ 8.01-668.3. Contents and form of the petition for a writ of relief.

A. Any person convicted of a qualifying offense may file a petition for writ of post-conviction relief setting forth the relevant facts and requesting that the judgment of a conviction be vacated, modified, or otherwise amended to reduce such person's sentence of incarceration or remove such person from community supervision. Such petition shall be filed on a form provided by the Office of the Executive Secretary of the Supreme Court by the petitioner or by counsel for the petitioner. Such petition shall allege with specificity all of the following: (i) the petitioner's full name and date of birth; (ii) the qualifying offense for which the petitioner was convicted; (iii) the date on which such qualifying offense was alleged to have been committed; (iv) the date on which the petitioner was sentenced for such qualifying offense; (v) whether the petitioner remains incarcerated in a state or local correctional facility or secure facility serving the sentence for such qualifying offense, and, if so, which facility, or the petitioner remains on community supervision for such qualifying offense; (vi) whether the petitioner has previously filed any other petition in accordance with this article; and (vii) the reason the petitioner is requesting a sentence modification and any information in support thereof. If the petitioner fails to submit a completed form, the circuit court may allow the petitioner to amend the petition to correct any deficiency. The petitioner shall 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.

B. Any person who files a petition pursuant to this article may file a petition for the assistance of counsel and a statement of indigency with the court on a form provided by the Office of the Executive Secretary of the Supreme Court; however, 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

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59 without the filing of such petition. No fee shall be charged for filing a petition under this subsection.

60 C. A person convicted of multiple qualifying offenses shall include all qualifying offenses in one
61 petition, if such convictions were all entered in the same city or county. A person convicted of qualifying
62 offenses in different cities or counties shall file petitions in the circuit courts of the cities or counties in
63 which the convictions were entered. A petition seeking a writ of post-conviction relief pursuant to this
64 article shall be filed by July 1, 2026.

65 **§ 8.01-668.4. Hearing on petition for writ of post-conviction relief.**

66 A. The attorney for the Commonwealth may file an objection or answer to the petition within 30
67 days after it is received from the petitioner. Upon the motion of the attorney for the Commonwealth and
68 for good cause shown, the court may allow the attorney for the Commonwealth up to an additional 30
69 days to respond to the petition. If the attorney for the Commonwealth does not file an objection or
70 answer or make a request for additional time to respond to the petition within 30 days after it is
71 received, the court shall conduct a hearing on any petition filed pursuant to this article within 60 days
72 after the petition was filed. If the attorney for the Commonwealth files an objection or answer or makes
73 a request for additional time to respond to the petition, the court shall conduct a hearing on any
74 petition filed pursuant to this article after reasonable notice to both the petitioner and the attorney for
75 the Commonwealth, but no later than 90 days after the petition was filed. The attorney for the
76 Commonwealth shall make reasonable efforts to notify any victim, as defined in § 19.2-11.01, of such
77 hearing.

78 B. Upon a hearing for a petition filed pursuant to this article, the court shall consider that
79 marijuana has been legalized and shall amend the petitioner's sentence to reduce the time of
80 incarceration left to serve or otherwise modify the person's conviction, including vacating such
81 conviction or removing such person from community supervision, if the court finds that it would be
82 compatible with the public interest to do so. In making such finding, the court shall consider (i) the
83 nature and circumstances of the offense, (ii) whether any acts of violence were attendant to the
84 commission of the offense, and (iii) the rehabilitation efforts undertaken by the petitioner
85 post-conviction.

86 **§ 8.01-668.5. Relief under a writ of post-conviction relief.**

87 A. The circuit court shall make a decision as to whether to vacate, modify, or otherwise amend the
88 petitioner's sentence of incarceration or remove such person from community supervision within 30 days
89 following the hearing on petition for writ of post-conviction relief. If the circuit court decides to modify
90 the sentence for a qualifying offense, the circuit court may only reduce the sentence imposed by the
91 sentencing court and shall not impose any additional time of incarceration or extend any period of
92 community supervision.

93 B. Upon granting a writ of post-conviction relief, the clerk of the circuit court shall cause a copy of
94 such order to be forwarded to the Virginia Criminal Sentencing Commission, the Department of State
95 Police, and the state or local correctional facility or secure facility where the petitioner is incarcerated
96 within five days.

97 C. If the petition for a writ of post-conviction relief is denied, the court shall file with the record of
98 the case a written explanation for the denial and shall provide a copy of such written explanation to the
99 petitioner or his attorney, if the petitioner is represented, and to the attorney for the Commonwealth.

100 D. Costs shall be as provided in § 17.1-275 but shall not be recoverable against the Commonwealth.
101 If the circuit court enters a writ of post-conviction relief, the clerk of the court shall refund to the
102 petitioner such costs paid by the petitioner.

103 **§ 8.01-668.6. Claims of relief.**

104 Except for appeals to the Supreme Court of Virginia as authorized by subsection D of § 8.01-668.2,
105 an action under this article or the performance of any attorney representing the petitioner under this
106 article shall not form the basis for relief in any habeas corpus or appellate proceeding. Nothing in this
107 article shall create any cause of action for damages against the Commonwealth or any of its political
108 subdivisions or any officers, employees, or agents of the Commonwealth or its political subdivisions.

109 **2. That the provisions of this act shall expire on July 1, 2027.**