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SENATE BILL NO. 518

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend the Code of Virginia by adding a section numbered 19.2-303.03, relating to modification of sentence for marijuana-related offenses.

Patrons—Lucas and Morrissey

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-303.03 as follows:

§ 19.2-303.03. Modification of sentence for marijuana-related convictions.

A. Notwithstanding other provisions of law or rule of court, if a person who (i) was convicted of a felony offense 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, 18.2-258.1, 18.2-258.02, 18.2-265.3, or 18.2-474.1 as it relates to marijuana committed prior to July 1, 2021; (ii) was sentenced to jail or to the Department of Corrections or placed on community supervision as defined in § 53.1-1 for such conviction; and (iii) 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, the circuit court that entered the original judgment or order shall schedule a hearing by January 1, 2023, to consider modification of such person's sentence. The Commonwealth shall be made party to the proceeding and receive notice of such hearing.

B. Notwithstanding other provisions of law or rule of court, if a person who (i) was convicted of a felony offense 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, 18.2-258.1, 18.2-258.02, 18.2-265.3, or 18.2-474.1 as it relates to marijuana committed prior to July 1, 2021, and on the date of such conviction was also convicted of any other offense; (ii) was sentenced to jail or to the Department of Corrections or placed on community supervision as defined in § 53.1-1 for such convictions; and (iii) 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, the circuit court that entered the original judgment or order shall schedule a hearing by April 1, 2023, to consider modification of such person's sentence. The Commonwealth shall be made party to the proceeding and receive notice of such hearing.

C. Notwithstanding other provisions of law or rule of court, a person who (i) was convicted of any felony offense committed prior to July 1, 2021; (ii) was sentenced to jail or to the Department of Corrections or placed on community supervision as defined in § 53.1-1 for such conviction; (iii) may have had such sentence enhanced because of a previous felony conviction under § 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, 18.2-258.1, 18.2-258.02, 18.2-265.3, or 18.2-474.1 as it relates to marijuana or without the involvement of marijuana such felony offense conviction or felony sentence enhancement would not have been possible, as the involvement of marijuana was necessary to satisfy the elements of the charged offense or the sentence enhancement; and (iv) 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 remains on community supervision, as defined in § 53.1-1, for such conviction on July 1, 2022, may petition the circuit court that entered the original judgment or order for modification of such person's sentence. A petition seeking modification of a sentence pursuant to this subsection shall be filed by July 1, 2024.

D. A petition for modification of sentence filed pursuant to subsection C shall be filed on a form provided by the Supreme Court of Virginia 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 felony offense for which the petitioner was convicted; (iii) the date on which such felony offense was alleged to have been committed; (iv) the date on which the petitioner was sentenced for such felony offense; (v) whether the petitioner remains incarcerated in a state or local correctional facility or secure facility serving the sentence for such felony offense and, if so, which facility; (vi) whether the petitioner has previously filed any other petition in accordance with subsection C; and (vii) the reason the petitioner is requesting a sentence modification and any information in support thereof, including information related to his sentence being enhanced because of a prior felony marijuana offense. If the

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

E. Any person eligible for modification of his sentence under subsection A, B, or C 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; 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 without the filing of such petition. No fee shall be charged for filing a petition under this subsection.

F. Upon a hearing for modification of a sentence pursuant to subsection A or B, the court shall consider that marijuana has been legalized, and shall 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 shall not exceed the original term imposed by the court.

G. Upon a hearing for modification of a sentence pursuant to subsection D, the court shall consider that marijuana has been legalized, and may 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 shall not exceed the original term imposed by the court.

H. The circuit court shall make a decision as to whether to modify a sentence within 30 days following the sentence modification hearing. If modification of a sentence is denied, the court shall file with the record of the case a written explanation for the denial and shall 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.

I. Following the entry of an order to modify a sentence pursuant to this section, the clerk of the circuit court shall cause a copy of such order to be forwarded 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.

J. The decision of a circuit court to modify a sentence pursuant to this section shall not form the basis for any relief in any habeas corpus or appellate proceeding, unless such decision was contrary to law.

2. 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, respectively, shall 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 subsections A and B of § 19.2-303.03 of the Code of Virginia, as created by this act, and shall (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.

3. That within 30 days of receiving the electronic list provided under the second enactment of this act, the clerk of each circuit court shall notify the chief judge of that circuit court who shall subsequently set a hearing within the timeframes required pursuant to subsections A and B of § 19.2-303.03 of the Code of Virginia, as created by this act, for each individual to determine whether to modify such individual's sentence.

4. That the provisions of this act shall expire on July 1, 2025.