

Racial and Ethnic Impact Statement

2022 General Assembly Session

Bill number: HB 758 (House Substitute); Terms for probation, revocation, and suspension of sentence.

Review requested by: Co-Chairman Deeds; Senate Judiciary Committee

Date: February 27, 2022

JLARC Staff Assessment of Potential for Disproportionate Impact

HB 758 would make several changes to laws that govern the length of probation and suspended sentences, the definition of a “technical violation,” and the revocation of probation and suspended sentences.

JLARC staff estimate that HB 758 would have the following disproportionate racial impacts:

- Increasing the maximum periods of probation and a suspended sentence for Class 1 and Class 2 misdemeanor offenses to up to two years would disproportionately impact Black persons, because Black persons are 1.8 times more likely to have a Class 1 or Class 2 misdemeanor conviction with a suspended sentence relative to their share of Virginia’s adult population;
- Modifying the definition of a technical violation to exclude (1) possession or distribution of controlled substances, (2) use or possession of a firearm, and (3) absconding would disproportionately impact Black persons, because Black persons are 1.7 times more likely to have one of these technical violations relative to their share of Virginia’s adult population; and
- Increasing the length of suspended sentences for crimes against nature for some defendants would have a negligible impact on Black persons because Black persons are 0.07 times less likely to have a conviction for crimes against nature with a suspended sentence relative to their share of Virginia’s adult population.

An explanation of the JLARC staff review is included on the pages that follow.

Bill summary

HB 758 would make several changes to laws that govern the length of probation and suspended sentences, the definition of a “technical violation,” and the revocation of probation and suspended sentences.

Legislation was enacted in the 2021 Special Session I that placed limitations on the imposition, suspension, and revocation of probation and suspended sentences. Key changes included (1) limiting the maximum length of time for which probation, supervised probation, and a suspended sentence can be imposed; (2) codifying the definition of a “technical violation” for purposes of revocations of a suspended sentence and probation; and (3) restricting the maximum term of active incarceration that a court can impose as a result of certain technical violations. These changes became effective on July 1, 2021.

HB 758 would modify the provisions related to probation and the suspension or modification of sentences, including: (1) increasing the maximum length of time for which probation and a suspended sentence can be imposed for Class 1 and Class 2 misdemeanors; (2) modifying the definition of a “technical violation;” (3) allowing the court to revoke any portion of a suspended sentence, up to the full suspended sentence, after a second technical violation; and (4) adding crimes against nature to the list of offenses for which the period of suspension must equal the statutory maximum period for which the defendant might originally have been sentenced.

Impact on aggregate criminal justice outcomes

HB 758’s various provisions would each affect different populations of individuals. The largest impact in terms of individuals affected would result from increasing the maximum length of time for which probation and a suspended sentence can be imposed for Class 1 and Class 2 misdemeanors. Fewer individuals would be affected by changing the definition of a technical violation and removing the cap on active incarceration that may be imposed for a second technical violation. The smallest impact in terms of the number of individuals affected would result from increasing the length of suspended sentences for crimes against nature (§ 18.2-361) for some defendants.

HB 758 would increase the maximum length of time for which probation and a suspended sentence can be imposed for Class 1 and Class 2 misdemeanor offenses

Under current law, the limitation on periods of probation and a suspended sentence is up to the statutory maximum period of imprisonment for an offense, which is up to six months for Class 2 misdemeanors and up to 12 months for Class 1 misdemeanors. HB

758 would increase the maximum periods of probation and a suspended sentence to up to two years for both Class 1 and Class 2 misdemeanors. From 2018–2021, approximately 60,000 individuals were convicted of at least one Class 1 or Class 2 misdemeanor in general district court and received a suspended sentence.

HB 758 would modify the definition of a “technical violation” of probation and a suspended sentence

HB 758 would modify the definition of a “technical violation” of probation and a suspended sentence by adding good behavior violations that did not result in a criminal conviction, as well as by removing violations for (1) possession or distribution of controlled substances, (2) use or possession of a firearm, and (3) absconding.

From FY19–FY20, up to 9,500 individuals had violations that would no longer be defined as technical violations under HB 758, excluding individuals with a new violation of law. (The 9,500 includes individuals with a violation of use of a controlled substance, which would still be a technical violation, but current data does not allow these individuals to be separated out.)

HB 758 would allow the court to revoke any portion of a suspended sentence, up to the full suspended sentence, after a second technical violation

Under current law there is a presumption against imposing a sentence of active incarceration for a second technical violation, and the court may impose no more than 14 days of active incarceration for a second technical violation (§ 19.2-306.1). HB 758 would remove these restrictions and allow the court to revoke any portion of the suspended sentence, up to the full suspended sentence, after a second technical violation. From FY19–FY20, approximately 10,800 individuals committed at least one technical violation (excluding individuals with a new violation of law), but data is not available to determine how many individuals committed a second technical violation and who, therefore, may be impacted by this change.

HB 758 would increase the length of suspended sentences for crimes against nature for some defendants

HB 758 would add crimes against nature (§ 18.2-361) to the list of offenses for which, if some period of the sentence for the offense is suspended, the period of suspension must equal the statutory maximum period for which the defendant might originally have been sentenced. This maximum time period ranges from five years to 20 years, depending on the specific offense. From 2012–2021, approximately 90 total individuals were convicted of a violation of § 18.2-361 in circuit court and received a suspended sentence.

Evidence of disproportionate impacts on racial or ethnic subgroups

To estimate whether there would be disproportionate racial impacts if HB 758 were enacted, JLARC staff compared the racial composition of Virginia's population age 18 and older to (1) the racial composition of individuals convicted of Class 1 or Class 2 misdemeanor offenses in general district court who received a suspended sentence; (2) the racial composition of individuals who committed technical violations related to use, possession, or distribution of controlled substances; use or possession of a firearm; or absconding; and (3) the racial composition of individuals convicted of crimes against nature in circuit court who received a suspended sentence.

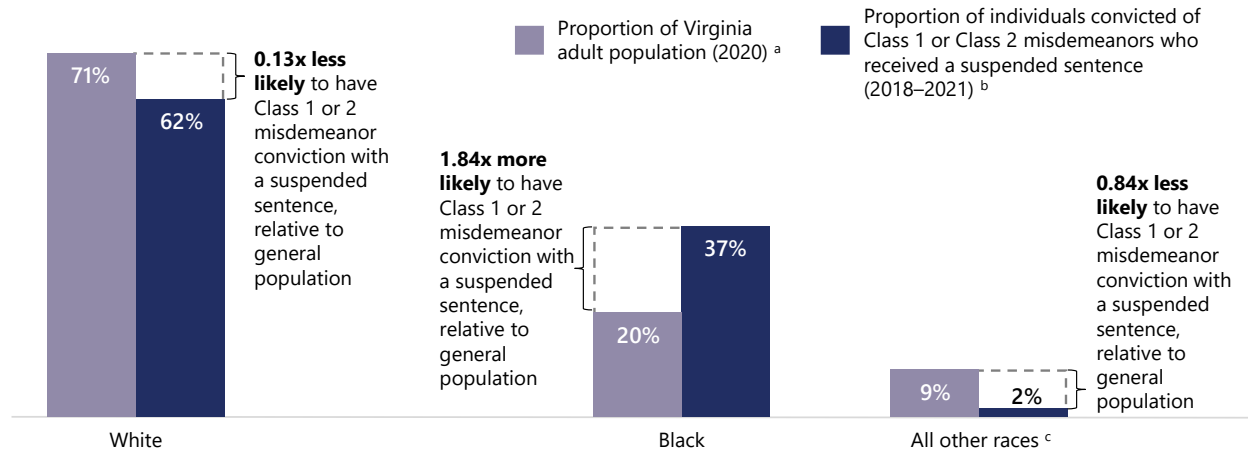
Data is not currently available to assess any racial impacts of removing the 14-day cap on active incarceration that may be imposed for a second technical violation.

HB 758's provision related to Class 1 and Class 2 misdemeanors would disproportionately impact Black persons because a higher proportion of individuals with suspended sentences for Class 1 or Class 2 misdemeanor convictions are Black relative to the proportion of Black persons in Virginia's adult population

Black individuals are 1.8 times (84 percent) more likely to have a Class 1 or Class 2 misdemeanor conviction with a suspended sentence relative to the proportion of Black persons in Virginia's adult population. This is because 37 percent of individuals with at least one Class 1 or Class 2 misdemeanor conviction who received a suspended sentence from 2018–2021 were Black, and 20 percent of Virginia adults are Black (Figure 1). Consequently, increasing the maximum periods of probation and a suspended sentence for Class 1 and Class 2 misdemeanor offenses to up to two years would disproportionately impact Black persons. Conversely, 62 percent of individuals with at least one Class 1 or Class 2 misdemeanor conviction who received a suspended sentence from 2018–2021 were white, and 71 percent of Virginia adults are white, so white persons are 0.13 times (13 percent) less likely to have a Class 1 or Class 2 misdemeanor conviction with a suspended sentence relative to the proportion of white persons in Virginia's adult population.

FIGURE 1

Black individuals are 1.8 times more likely to have a Class 1 or Class 2 misdemeanor conviction with a suspended sentence relative to Virginia's population age 18 and older



SOURCE: JLARC staff analysis of general district court data from the Office of the Executive Secretary of the Virginia Supreme Court.

NOTE: ^aPopulation data from Virginia 2020 Census estimates of adult population over 18 years of age. ^bIncludes individuals who received at least one Class 1 or Class 2 misdemeanor conviction in general district court from 2018–2021 who received a suspended sentence.

^cAmerican Indian or Alaskan Native, Asian or Pacific Islander, Hispanic, and other/unknown race in general district court data.

Modifying the definition of a technical violation under HB 758 would disproportionately impact Black persons because a higher proportion of individuals whose violations would no longer be technical are Black relative to the proportion of Black persons in Virginia's adult population

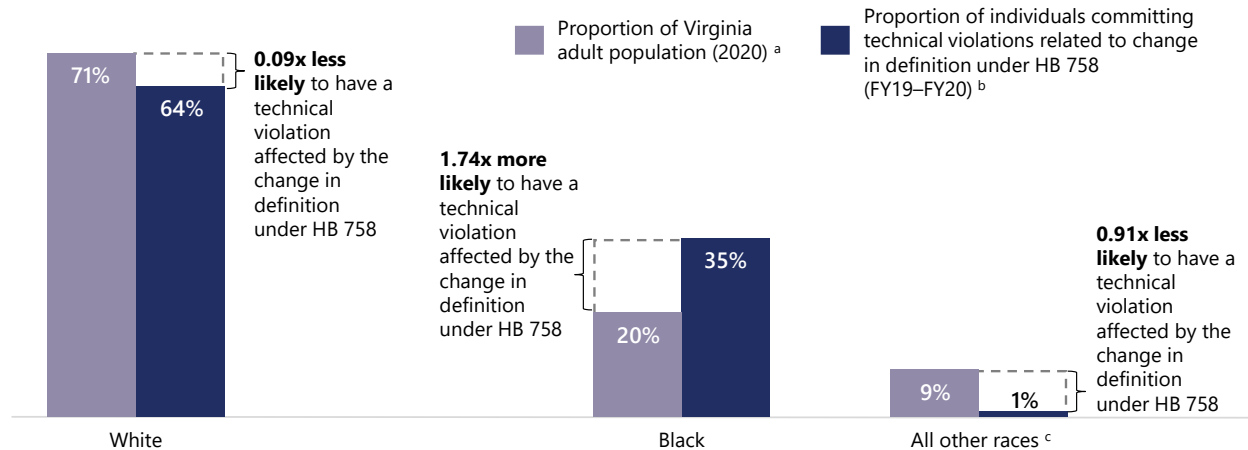
Black individuals are 1.7 times (74 percent) more likely to have technical violations related to (1) use, possession, or distribution of controlled substances, (2) use or possession of a firearm, and (3) absconding, which would be removed from the definition of technical violation of probation and a suspended sentence under HB 758.

(HB 758 would retain use of controlled substances in the definition of a technical violation.) This is because 35 percent of individuals with these technical violations in FY19–FY20 were Black, and 20 percent of Virginia adults are Black (Figure 2).

Consequently, amending the definition of a technical violation would disproportionately impact Black persons. Conversely, 64 percent of individuals with these technical violations in FY19–FY20 were white, and 71 percent of Virginia adults are white, so white persons are 0.09 times (9 percent) less likely to have technical violations that would be affected by the amended definition under HB 758 relative to the proportion of white persons in Virginia's adult population.

FIGURE 2

Black individuals are 1.7 times more likely to have a technical violation related to the change in definition under HB 758 relative to Virginia's population age 18 and older



SOURCE: JLARC staff analysis of sentencing revocation reports from the Virginia Criminal Sentencing Commission and general district court data from the Office of the Executive Secretary of the Virginia Supreme Court.

NOTE: ^a Population data from Virginia 2020 Census estimates of adult population over 18 years of age. ^b Includes individuals who committed a technical violation related to (1) use, possession, or distribution of controlled substances, (2) use or possession of a firearm, and (3) absconding, but excludes individuals who committed a new violation of law. HB 758 would retain use of controlled substances in the definition of a technical violation, but would exclude possession and distribution. However, technical violations are recorded on sentencing revocation reports by condition, and it was therefore not possible to separate technical violations related to use of controlled substances from those related to possession and distribution. ^c Combination of American Indian or Alaskan Native, Asian or Pacific Islander, Hispanic, and other/unknown race in general district court data.

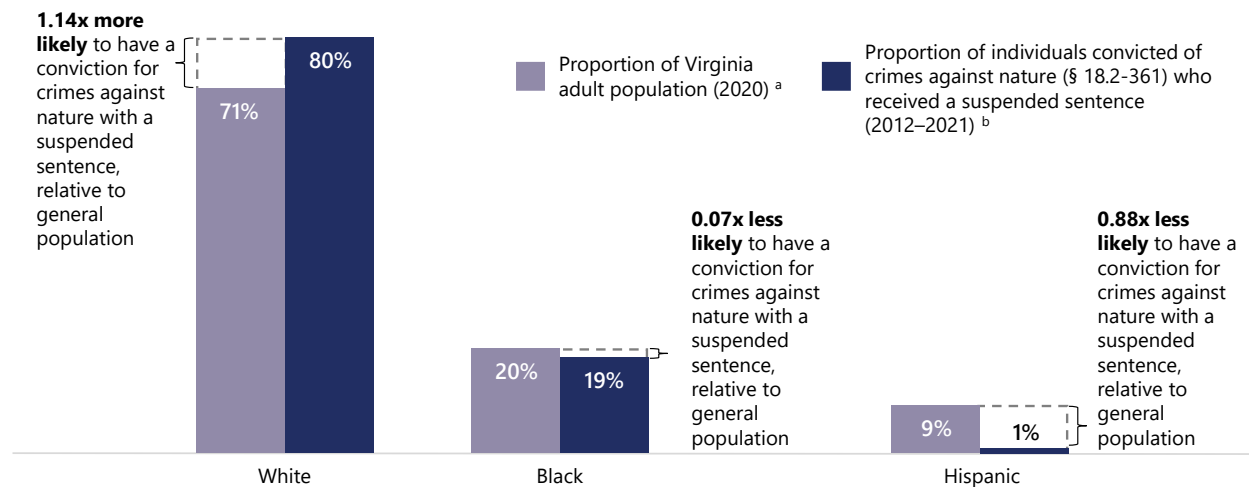
HB 758's provision related to crimes against nature would have a negligible impact on Black persons, and would impact fewer Black persons relative to the proportion of Black persons in Virginia's adult population, because a lower proportion of individuals with suspended sentences for convictions of crimes against nature are Black

Black individuals are 0.07 times (7 percent) less likely to have a conviction for crimes against nature (§ 18.2-361) with a suspended sentence relative to the proportion of Black persons in Virginia's adult population. This is because 19 percent of individuals with at least one conviction for crimes against nature who received a suspended sentence from 2012–2021 were Black, and 20 percent of Virginia adults are Black (Figure 3). Consequently, increasing the length of suspended sentences for crimes against nature for some defendants would have a negligible impact on Black persons. Conversely, 80 percent of individuals with at least one conviction for crimes against nature who received a suspended sentence from 2012–2021 were white, and 71 percent of Virginia adults are white, so white persons are 1.1 times (14 percent) more likely to have a conviction for crimes against nature with a suspended sentence relative to the proportion of white persons in Virginia's adult population. The total impact of this

provision would be very small because, for the last 10 years, only nine people per year on average were convicted in Virginia for crimes against nature and received a suspended sentence.

FIGURE 3

Black individuals are 0.07 times less likely to have a conviction for crimes against nature with a suspended sentence relative to Virginia's population age 18 and older



SOURCE: JLARC staff analysis of circuit court data from the Office of the Executive Secretary of the Virginia Supreme Court and Fairfax County Circuit Court.

NOTE: ^aPopulation data from Virginia 2020 Census estimates of adult population over 18 years of age. ^bIncludes individuals who received at least one conviction for crimes against nature (§ 18.2-361) in circuit court from 2012–2021 who received a suspended sentence.

Patron: Delegate Les Adams

Prepared by: Brittany Utz, Erik Beecroft, Kimberly Sarte

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