Virginia Retirement System

2022 Fiscal Impact Statement

1. **Bill Number:** HB 1119

   House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

   Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron:** Campbell, R.

3. **Committee:** Appropriations

4. **Title:** Pensions; loss of benefits for certain felony convictions.

5. **Summary:** Provides that a law-enforcement officer shall not lose his benefits in any retirement system administered by the Board of Trustees of the Virginia Retirement System upon being convicted of a felony, unless such felony was (i) the result of gross negligence or intentional misconduct by such officer or (ii) resulted in any pecuniary benefit for such officer.

6. **Summary of Impacts**

   Benefit(s) impacted: Retirement benefits of those law-enforcement officers convicted of a felony that (i) was not the result of gross negligence or intentional misconduct by such officer or (ii) did not result in any pecuniary benefit for such officer. In those cases, the law-enforcement officer would not relinquish their benefits under § 51.1-124.13. Does not impact felony forfeitures for other VRS members.

   Impact to unfunded liability (see Item 9 for details): None.

   Impact to contribution rate(s) (see Item 9 for details): None.

   Specific Agency or Political Subdivisions Affected (see Item 10): VRS and potentially VRS employers that employ law-enforcement officers.

   VRS cost to implement (see Item 7 and Item 8 for details): Minimal.

   Employer cost to implement (see Item 7 and Item 8 for details): Indeterminate.

   Other VRS and employer impacts (see Items 7, 9, 11, and 12 for details): Employers would need to be prepared to determine if either of the two qualifiers in the bill apply.

   GF budget impacts (see Item 8 for details): None.

   NGF budget impacts (see Item 8 for details): None.

7. **Budget Amendment Necessary**: No.VRS can implement this bill within the existing budget and does not require additional funding. The agency will review all legislation likely to be enacted prior to the passage by each chamber. Depending on the aggregate number of bills likely to pass, it is possible that the agency will require authorization to expend additional

non-general fund resources. If so, VRS will identify the costs and request such resources at that time.

8. **Fiscal Impact Estimates:** More detail on the fiscal impact is explained in Item 9 below.

9. **Fiscal Implications:** None.

10. **Specific Agency or Political Subdivisions Affected:** VRS and potentially VRS employers that employ law-enforcement officers as defined in § 9.1-101.

11. **Technical Amendment Necessary:** Yes. For administrative clarity on when the bill applies, VRS suggests the following amendment:

On line 22, after "beginning", insert

> With convictions occurring on or after

> So that it reads:
> *Notwithstanding the foregoing and beginning* <mark>*with convictions occurring on or after*</mark> *July 1, 2022, for purposes of this subsection, "felony" shall not include a felony committed by a law-enforcement officer, as that term is defined in § __9.1-101__, so long as such felony (i) was not the result of gross negligence or intentional misconduct by such officer or (ii) did not result in any pecuniary benefit, as that term is defined in § __18.2-446__, for such officer.*

12. **Other Comments:** The proposed bill modifies § 51.1-124.13 by providing that a law-enforcement officer as defined in § 9.1-101 shall not lose their benefits in any retirement system administered by the Board of Trustees of the Virginia Retirement System upon being convicted of a felony if such felony was (i) not the result of gross negligence or intentional misconduct by such officer or (ii) did not result in any pecuniary benefit for such officer. The bill specifies that it is effective as of July 1, 2022.

    The bill as drafted results in:

    - any felony by a law enforcement officer that is not due to the gross negligence or intentional misconduct of an officer being exempted from requiring forfeiture under the statute, or

    - any felony that does not provide pecuniary benefit to the law enforcement officer being exempted from requiring forfeiture under the statute.

The use of "or" between the two conditions in the bill means that only one condition needs to be met to exempt the law-enforcement officer from operation of the statute.

The statute currently requires, "No person shall be entitled to any of the benefits of this title as provided in this section if (i) he is convicted of a felony and (ii) the person's employer determines that the felony arose from misconduct occurring on or after July 1, 2011, in any position in which the person was a member covered for retirement purposes under any retirement system administered by the Board."

Under current law, if a VRS member is convicted of a felony that the employer determines arose from misconduct that occurred on or after July 1, 2011 in a VRS-covered position, the individual will not receive any VRS benefits.

In 2017, an opinion of the Attorney General clarified its interpretation that the statute requires employers to make forfeiture determinations (OAG Opinion 16-024, dated January 18, 2017).

The employer makes the determination that an employee meets the statutory requirements for the forfeiture. The employer then submits a VRS-180 form notifying VRS that a member has been convicted of a felony for misconduct associated with the member's performance of job duties and that all VRS- related benefits must be forfeited. This form is submitted to VRS after the statutory appeals period has ended.

VRS does not have any discretion in whether or not to process the form to enforce the statutory relinquishment. The determination concerning the forfeiture is binary. Benefits forfeiture cancels the member's VRS membership and all rights to VRS pension and ancillary benefits, such as group life insurance or the health insurance credit, if the member is eligible. The member receives a refund of the member's contribution account including statutory interest. Any contributions a member has made to a defined contribution account, such as the Commonwealth of Virginia 457 Deferred Compensation Plan, are not subject to forfeiture, although any employer contributions are forfeited.

If an employee's felony conviction is overturned, the employer must contact VRS to ensure the employee's benefits are reinstated.

The proposed bill provides that a law-enforcement officer convicted of a felony that was not the result of gross negligence or intentional misconduct by such officer or that did not result in any pecuniary benefit for such officer would not lose their VRS benefits under the statute. Before submitting the VRS-180, employers would need to be prepared to determine whether the felony was the result of gross negligence or intentional misconduct, or whether the felony resulted in any pecuniary benefit to the officer.

Section 18.2-9 of the *Code of Virginia* categorizes felonies into six classes. A general description of these classes is set out below, and it is difficult from a review of the classes of felonies to determine if there are any that would not involve gross negligence or intentional misconduct.

> **Class 1 Felonies**
> A conviction of a Class 1 crime comes with the harshest penalties. Examples of crimes that are classified as Class 1 crimes are capital murder and first-degree murder. A person over 18 years old and not mentally incompetent could be convicted of capital murder and be sentenced to death. A person charged with first-degree murder or another Class 1 offense could be sentenced to life in prison and fined up to $100,000.

Class 2 Felonies

A Class 2 felony often involves intentional crimes, such as arson, kidnapping, aggravated malicious wounding, which is causing permanent and physical impairment to another person, murder in some situations, and burglary with a deadly weapon. The sentence can range from a minimum of 20 years in prison to a life sentence and a fine of up to $100,000.

Class 3 Felonies

A Class 3 felony involves shooting or stabbing a person, attempting to poison someone, or certain drug crimes. Another common example of a Class 3 felony is malicious wounding—causing injury to a person with the intent of killing, disfiguring, or disabling him. A conviction can result in a prison sentence of 5 to 20 years and a fine not exceeding $100,000.

Class 4 Felonies

Embezzlement, arson of an unoccupied building, prostitution, kidnapping, and manslaughter can result in a Class 4 felony conviction. The penalties range from 2 to 10 years in prison and a fine of up to $100,000.

Class 5 Felonies

Crimes that fall within this classification include involuntary manslaughter, extortion, and battery. These are often considered "wobbler" crimes that could be charged as a felony or misdemeanor, depending on the circumstances of the crime. A felony conviction could result in a prison sentence of 1 to 10 years and a fine of up to $2,500.

Class 6 Felonies

Class 6 felonies are the least serious felonies and are also considered "wobblers" that might result in a misdemeanor conviction. Examples of these crimes include animal cruelty, repeat larcenies, reckless endangerment, and violation of a court order. A sentence for a felony conviction could include one to five years in prison and a fine of $2,500.

The use of the conjunction "or" between the two conditions in the proposed bill, however, means that only one condition needs to be met to exempt the law-enforcement officer from operation of the statute. Consequently, as long as the law-enforcement officer receives no pecuniary benefit from commission of a felony arising from misconduct related to a VRS-covered position, the law-enforcement officer would not be subject to the relinquishment of benefits under the proposed bill, regardless of whether a felony also involved gross negligence or intentional misconduct.

Since § 51.1-124.13 was enacted in 2011, there have been less than 20 VRS members or retirees who have relinquished their benefits under the statute.