

## **Department of Planning and Budget**

### **2023 Fiscal Impact Statement**

**1. Bill Number:** SB1523

**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, 2022, and who remain incarcerated or on community supervision on July 1, 2023, 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, 2022, who remain incarcerated or on community supervision on July 1, 2023, 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 a petition to be filed by July 1, 2025.

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, 2023, 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, 2026.

6. **Budget Amendment Necessary:** Indeterminate
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** Based on December 31, 2022 data, the Department of Corrections (DOC) estimates that this bill would impact approximately 669 Community Corrections supervisees who would be eligible for marijuana sentence modifications by January 1, 2024, and up to 2,348 (up to 521 inmates and 1,827 Community Corrections supervisees) who would be eligible for marijuana sentence modifications by April 1, 2024. However, any impact this proposal would have on state-responsible bed space or the size of the Community Corrections population is dependent on the number of sentence modification hearings held by the courts. the number of sentences that are modified, and the extent to which sentences are modified.

Persons who are eligible for modification of their sentence may have counsel appointed for the purposes of the modification hearing if they are indigent or were found to be indigent at their original sentencing. Counsel appointed to represent persons during sentence modification hearings would have their fees paid out of the Criminal Fund. Electronic systems maintained by the Office of the Executive Secretary of the Supreme Court of Virginia (OES) do not have the ability to determine the number of cases where the defendant was determined to be indigent at sentencing, nor is information available to determine the number of persons who would be appointed an attorney based on a future request for

appointment based on indigency. Therefore, the fiscal impact upon the Criminal Fund is indeterminate. The fiscal impact on local jails cannot be determined at this time.

According to the Department of Juvenile Justice, this bill is not expected to have a fiscal impact on agency operations. The impact this bill may have on local and regional jails and courts 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