

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB696 ER

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Enrolled

2. Patron: Williams Graves

3. Committee: Passed both Houses

4. Title: Modification of sentence for marijuana-related offenses.

5. Summary: This bill creates a process by which persons convicted of certain felony marijuana-related offenses involving the possession, manufacture, selling, giving, distribution, transportation, or delivery of marijuana committed prior to July 1, 2021, who remain incarcerated or on community supervision on July 1, 2024, must receive an automatic hearing to consider modification of such person's sentence. The bill sets January 1, 2025, as the deadline by which such hearings must be scheduled.

The bill also creates a process by which persons convicted of any felony offense involving the possession, manufacture, selling, giving, distribution, transportation, or delivery of marijuana, committed prior to July 1, 2021, and on the date of such conviction was also convicted of any other offense other than an act of violence as defined in § 19.2-297.1 who remain incarcerated or on community supervision on July 1, 2024, must receive an automatic hearing to consider modification of such person's sentence. The bill sets April 1, 2025, as the deadline by which such hearings must be scheduled.

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, 2024, 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, 2027.

6. **Budget Amendment Necessary:** Items 49 and 390. Also, see Item 8 below.
7. **Fiscal Impact Estimates:** Final. See Item 8 below.
8. **Fiscal Implications:** Based on data as of December 31, 2023, the Department of Corrections (DOC) estimates that this bill would impact approximately 370 inmates and approximately 1,224 probationers/parolees who would be eligible for sentence modifications under the provisions of this bill. The Compensation Board estimates that there are approximately 250 inmates serving sentences in local and regional jails that may be eligible for sentence modifications under the provisions of this bill. However, any impact this proposal would have on jail bedspace, prison bedspace, or on DOC's Community Corrections population is dependent on the actions the courts take on petitions including the number of sentences that are modified and the extent to which sentences are modified.

Impacts on agency operations are provided below:

Department of Corrections

This bill requires DOC to identify whether the inmate is serving a sentence for one of the related convictions to prepare the list required in this bill to each circuit court. The bill language excludes those convicted of an act of violence per §19.2-297.1(certain violent

felonies) which DOC reports would require individual review each inmate's criminal convictions to identify such inmates.

According to DOC, the determination of inmate eligibility, development of the lists to each circuit court, and notification to inmates and probationers/parolees is expected to be staff intensive. DOC anticipates the additional workload required to determine inmate eligibility, to develop the required lists for circuit courts, and to notify eligible persons would be managed utilizing temporary contractual services or hourly wage employees. The agency estimates the one-time cost of these contractual services at \$102,000 general fund.

Courts

According to the Office of the Executive Secretary of the Supreme Court (OES), this bill would have an impact on the Criminal Fund. OES reports that counsel appointed for indigent petitioners are compensated at \$1,235 for their representation. This bill will also increase the workload of circuit court judges, who would be tasked with adjudicating the petitions for modification. The added judicial workload is indeterminate but is expected to be significant.

Although the bill specifies that an appeal is permitted only when the circuit court's decision is "contrary to law," the Court of Appeals must address even appeals that are not meritorious, defaulted, or waived. Because of this, OES reports that the Court of Appeals is likely to need additional Deputy Clerk positions and additional Staff Attorney positions in the future to adequately handle this additional workload. The impact to the Criminal Fund for appointed counsel representation for appeals heard within the Virginia Court of Appeals, is estimated at \$1,900 per appeal.

Unsuccessful petitioners also would be permitted a further appeal to the Supreme Court. Petitioners also could use writs of habeas corpus to challenge circuit court decisions regarding sentence modification. As these petitioners already will have received an adverse ruling from the circuit court, it is assumed most will file their habeas petitions under the original jurisdiction of the Supreme Court rather than in the circuit court. OES reports that this may impact the workload of the Supreme Court, which will likely require additional clerk positions and additional staff attorney positions in the future. The impact to the Criminal Fund for appointed counsel representation during such Supreme Court of Virginia appeals, at an estimated \$1,300 per appeal.

Other Agencies

The Office of Attorney General reports that this bill is expected to increase the workload associated with increased appeals, which would require an additional staff attorney at \$126,951 general fund each year.

The Virginia State Police reports that this bill is expected to temporarily increase the workload associated with recording modified sentences in criminal records histories and that contract employees would be used to address the increase. VSP's ability to absorb this cost will be dependent on the number of sentencing modifications granted by the courts.

The impact this bill may have on Commonwealth's Attorneys will depend on the number and complexity of the petitions received and is, therefore, not known at this time.

The impact this bill may have on the Department of Juvenile Justice and local and regional jails is not known at this time.

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