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SENATE BILL NO. 745

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 7, 2022)

(Patrons Prior to Substitute—Senators Surovell and Lucas [SB 518])

A *BILL to amend and reenact § 53.1-165.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-303.03, relating to modification of sentence for marijuana-related offenses.*

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-165.1 of the Code of Virginia is amended and reenacted and 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 July 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, a person who remains incarcerated in the custody of Department of Corrections on July 1, 2022, for a felony conviction and who is not serving a sentence for a conviction of an act of violence as defined in § 19.2-297.1 and who may have had such felony conviction sentence enhanced because of a 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, 18.2-258.02, 18.2-258.1, 18.2-265.3, or 18.2-474.1 as it relates to marijuana shall be eligible for parole pursuant to §§ 53.1-151, 53.1-152, and 53.1-165.1.

C. Any person eligible for modification of a sentence under subsection A 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. The court may summarily dismiss the petition if the person is not eligible for modification of a sentence based on the criteria set forth in subsection A. If the petition is not summarily dismissed and the court finds that the person is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10, the court shall appoint counsel to represent the petitioner. If a 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. An attorney appointed to represent a person pursuant to this subsection shall be compensated at the same rate as an attorney providing representation on a felony case pursuant to § 19.2-163.

D. Upon a hearing for modification of a sentence pursuant to subsection A, the court shall consider that marijuana has been legalized and shall reduce, including a reduction to time served, 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.

E. Notwithstanding any other provision of law, the court may modify a sentence pursuant to this section regardless of whether any mandatory minimum term of confinement or other minimum term of incarceration is required by law.

F. The circuit court shall make a decision as to whether to modify a sentence within 60 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.

G. 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 correctional facility or other facility where the individual is incarcerated or the agency overseeing the individual's supervision within 10 days.

H. The decision of a circuit court to modify a sentence pursuant to this section shall not form the

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60 *basis for any relief in any habeas corpus or appellate proceeding, unless such decision was contrary to*
61 *law.*

62 **§ 53.1-165.1. Limitation on the application of parole statutes.**

63 A. The provisions of this article, except §§ 53.1-160 and 53.1-160.1, shall not apply to any sentence
64 imposed or to any prisoner incarcerated upon a conviction for a felony offense committed on or after
65 January 1, 1995. Any person sentenced to a term of incarceration for a felony offense committed on or
66 after January 1, 1995, shall not be eligible for parole upon that offense.

67 B. The provisions of this article shall apply to any person who was sentenced by a jury prior to June
68 9, 2000, for any felony offense committed on or after January 1, 1995, and who remained incarcerated
69 for such offense on July 1, 2020, other than (i) a Class 1 felony or (ii) any of the following felony
70 offenses where the victim was a minor: (a) rape in violation of § 18.2-61; (b) forcible sodomy in
71 violation of § 18.2-67.1; (c) object sexual penetration in violation of § 18.2-67.2; (d) aggravated sexual
72 battery in violation of § 18.2-67.3; (e) an attempt to commit a violation of clause (a), (b), (c), or (d); or
73 (f) carnal knowledge in violation of § 18.2-63, 18.2-64.1, or 18.2-64.2.

74 C. The Parole Board shall establish procedures for consideration of parole of persons entitled under
75 subsection B consistent with the provisions of § 53.1-154.

76 D. Any person who meets eligibility criteria for parole under subsection B and pursuant to
77 § 53.1-151 as of July 1, 2020, shall be scheduled for a parole interview no later than July 1, 2021,
78 allowing for extension of time for reasonable cause.

79 E. Notwithstanding the provisions of subsection A or any other provision of this article to the
80 contrary, any person sentenced to a term of life imprisonment for a single felony or multiple felonies
81 committed while the person was a juvenile and who has served at least 20 years of such sentence shall
82 be eligible for parole and any person who has active sentences that total more than 20 years for a single
83 felony or multiple felonies committed while the person was a juvenile and who has served at least 20
84 years of such sentences shall be eligible for parole. The Board shall review and decide the case of each
85 prisoner who is eligible for parole in accordance with § 53.1-154 and rules adopted pursuant to
86 subdivision 2 of § 53.1-136.

87 F. *The provisions of this article shall apply to any person convicted of a felony and who is not*
88 *serving a sentence for a conviction of an act of violence as defined in § 19.2-297.1, who may have had*
89 *a sentence enhanced because of a felony conviction under § 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-250,*
90 *18.2-255, 18.2-255.2, 18.2-256, 18.2-257, 18.2-258, 18.2-258.02, 18.2-258.1, 18.2-265.3, or 18.2-474.1*
91 *as it relates to marijuana, when such felony offense was committed on or after January 1, 1995, and*
92 *who was committed by a court under the laws of the Commonwealth to the Department of Corrections*
93 *and remains incarcerated for such offense on July 1, 2022.*

94 **2. That on or before September 1, 2022, pursuant to subsection A of § 19.2-303.03 of the Code of**
95 **Virginia, as created by this act, the Department of Corrections, sheriff of a local jail, regional**
96 **director of a regional jail, and the Department of Juvenile Justice, respectively, shall determine**
97 **which individuals currently incarcerated in such state correctional facility, local correctional**
98 **facility, or secure facility, or placed on community supervision, respectively, meet the criteria for a**
99 **hearing on the modification of their sentence as set forth in subsection A of § 19.2-303.03 of the**
100 **Code of Virginia, as created by this act, and shall (i) provide an electronic list of such individuals**
101 **to the clerk of each circuit court in the jurisdiction where the individual was sentenced and (ii)**
102 **notify all such individuals that they may be eligible for modification of their sentence, that a**
103 **hearing will be scheduled for such determination, that they may file a petition for assistance of**
104 **counsel and a statement of indigency, and that if they were determined to be indigent at their**
105 **original sentencing, they shall be entitled to assistance of counsel for the hearing on modification**
106 **of their sentence without the filing of such petition.**

107 **3. That within 60 days of receiving the electronic list provided under the second enactment of this**
108 **act, the clerk of each circuit court shall notify the chief judge of that circuit court who shall**
109 **subsequently set a hearing for each eligible individual within the timeframes required pursuant to**
110 **subsection A of § 19.2-303.03 of the Code of Virginia, as created by this act, to determine whether**
111 **to modify such individual's sentence.**

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