

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB758 H1

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Adams, L.R.

3. Committee: Courts of Justice

4. Title: Probation, revocation, and suspension of sentence; penalty.

5. Summary: This bill amends laws that govern the length of probation terms and the suspension or modification of sentences in the following ways:

- Currently, the court is allowed to fix the period of probation for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, regardless of the charge. The substitute bill limits the length of probation to no more than two years for any offense punishable as a Class 1 or Class 2 misdemeanor.
- The bill adds the offense of crimes against nature (§ 18.2-361), committed on or after July 1, 2022, 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.
- The bill defines technical violation of probation and limits the amount of time that can be imposed for technical violations:
 - For a first technical violation, the court is required to suspend all of the sentence for the same period of time as pronounced in the original sentencing order or for a period up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned. The bill provides that the limitation on the period of probation or supervised probation does not apply to the extent that an additional period of probation is necessary (a) for the defendant to participate in a court-ordered program or (b) if a defendant owes restitution and is still subject to restitution compliance review hearings in accordance with § 19.2-305.1 (Restitution for property damage or loss; community service).
 - For a second or subsequent technical violation or any other violation, when the court originally suspended the imposition of a sentence or suspended the execution of a sentence, the court may suspend the sentence in whole or in part and may place the defendant upon terms and conditions or probation as deemed appropriate by the court.
- The bill repeals § 19.2-306.1, which defines the term technical violation and sets limits on the length of sentences that can be imposed when a suspended sentence is revoked.

- 6. Budget Amendment Necessary:** Yes. Item 404.
- 7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.
- 8. Fiscal Implications:** The proposed legislation would remove the current caps on sentences for technical violations in many cases. By removing the caps, some felony offenders may be sentenced to supervised probation terms greater than the current five-year limit and sentences for some probationers found to have committed technical violations may be higher than under current law. Should additional offenders receive state-responsible (prison) terms for probation violations (compared to current law), the proposal may increase the future prison bed space needs of the Commonwealth. However, according to the Virginia Criminal Sentencing Commission (VCSC), current data are insufficient to estimate the number of individuals likely to be affected by the proposed changes and the impact on sentencing. Therefore, the magnitude of the impact cannot be determined. Although it is not feasible to estimate the impact this bill may have in the future, incarcerating probation violators could increase state-responsible (prison) bed space needs.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 552, 2021 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

The provisions of this bill may also increase the bed space needs in jails. According to the VCSC, not enough information is available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local jail.

Information on the impact this bill may have on the Department of Corrections, as it relates to probation and parole workloads, is not known at this time. If further information is received, this fiscal impact statement will be revised. This bill is not expected to have a material impact on courts.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, local and regional jails, courts
- 10. Technical Amendment Necessary:** No
- 11. Other Comments:** None