

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: SB745 ES1

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

2. Patron: Surovell

3. Committee: Judiciary

4. Title: Parole; exception to the limitation on the application of parole statutes; felony marijuana.

5. Summary: The substitute bill creates a process for persons convicted of certain felony marijuana-related offenses committed prior to July 1, 2021, and who remain incarcerated or on community supervision on July 1, 2022, to receive an automatic hearing to consider modification of his sentence. The bill sets deadlines by which hearings must be scheduled. The bill requires that the Commonwealth be made party to the proceeding and receive notice of such hearing.

The bill makes any person convicted of any felony offense who remains incarcerated in the custody of the Department of Corrections (DOC) on July 1, 2022, for a felony conviction, who is not serving a sentence for a conviction of an act of violence and who may have had such felony conviction sentence enhanced because of a felony conviction of certain drug crimes as it relates to marijuana eligible for parole. The engrossed bill requires that inmates eligible for parole under this proposal must be scheduled for a parole interview no later than July 1, 2023, allowing for extension of time for reasonable cause.

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. The bill prohibits fees from being charged for such filing. The bill provides that an attorney appointed to represent a person pursuant to this subsection must be compensated at the same rate as an attorney providing representation on a felony case pursuant to § 19.2-163 (Compensation of court-appointed counsel). The bill directs the court to consider that marijuana has been legalized and to 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 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 60 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 ten days.

The bill contains an enactment clause that requires that, on or before September 1, 2022, 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, that a hearing will be scheduled for such determination, that they may file a petition for assistance of counsel and a statement of indigency and that if they were determined to be indigent at their original sentencing, they shall be entitled to assistance of counsel for the hearing on modification of their sentence without the filing of such petition.

The bill contains an enactment clause requiring that, within 60 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, 2025.

6. **Budget Amendment Necessary:** Yes, Item 61.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** The Department of Corrections (DOC) identified 428 state-responsible (SR) inmates who were incarcerated at the end of August 2021 who may be eligible to petition for a sentence modification under the provisions of this bill. DOC has now identified 168 offenders sentenced to community corrections at the end of December 2021 with marijuana offenses who would be eligible to petition for a sentence modification under the provisions of this bill. DOC reports that any sentence modifications granted by the court would require manual updates to offender records, which may require additional resources. It is expected that the cost for addressing the additional workload could be absorbed by DOC.

According to data provided by DOC, there are 64 inmates who were incarcerated on August 31, 2021, who would be immediately eligible for parole consideration under the provisions of this bill and another 14 who would become eligible by the end of calendar year 2025. DOC

reports that, because of the small number of offenders affected, this provision of the bill is not expected to have a fiscal impact on agency operations.

The Virginia Parole Board also reports that this bill is not expected to have a material impact on agency operations. However, this bill would require modifications to CORIS, which DOC uses to track offender data including parole eligibility status. The estimated one-time cost to make the required changes is \$360,000, which is expected to be absorbed by DOC. However, the cumulative costs associated with other bills that are passed during the 2022 General Assembly session may have to be addressed if multiple or complex changes to CORIS are ultimately required. Additionally, due to the volume of changes currently being made to CORIS, DOC may not be able to make changes required by this bill immediately upon its passage.

According to the Office of Attorney General (OAG), each change in parole statutes increases the number of lawsuits filed by or on behalf of inmates. The OAG estimates that two additional attorneys, at a cost of \$138,598 per position, one additional paralegal professional, at a cost of \$110,819, and one additional legal secretary, at a cost of \$100,199 would be needed in order to address the workload issues created by this bill (position costs include salaries and benefits). General fund costs estimated by the OAG total \$488,214 each year.

The Department of State Police (VSP) reports that this bill will require modifying sentencing information in the Computerized Criminal History (CCH) system. According to VSP, if additional Administrative and Office Specialist staff are required, these positions would be contracted at an estimated \$25 per hour per staff member.

Because the number of resentencing hearings that may be held is not known, the impact this bill may have on courts cannot be determined at this time. Likewise, the number of petitioners who may be deemed indigent and the impact this may have on the Criminal Fund cannot be determined.

The impact this bill may have on local and regional jails and the Department of Juvenile Justice 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