

## Department of Planning and Budget 2024 Session Fiscal Impact Statement

**1. Bill Number:** HB834

**House of Origin**     Introduced     Substitute     Engrossed  
**Second House**     In Committee     Substitute     Enrolled

**2. Patron:** Cousins

**3. Committee:** Courts of Justice

**4. Title:** Petition for modification of a sentence; eligibility; procedures.

**5. Summary:** This bill provides a process for a person serving a sentence for any conviction or a combination of any convictions who remains incarcerated in a state or local correctional facility or secure facility and meets certain criteria to petition the circuit court that entered the original judgment or order to (i) suspend the unserved portion of such sentence or run the unserved portion of such sentence concurrently with another sentence, (ii) place such person on probation for such time as the court shall determine, or (iii) otherwise modify the sentence imposed.

The bill requires that the Commonwealth be made party to the proceeding and requires the petitioner to provide a copy of the petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth of the city or county in which the petition is filed. The bill sets timelines for Commonwealth's Attorneys to answer petitions. The bill sets timelines for the court to conduct a hearing on a petition. The bill requires the Commonwealth's Attorney to make reasonable efforts to notify victims or to file a written pleading outlining efforts made to notify the victim.

The bill requires that, following the entry of an order to modify a sentence pursuant to the provisions of this bill, the clerk of the circuit court must forward a copy of such order to be 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 requires that the petitioner must receive credit for any time served in any local or state correctional facility or secure facility if a sentence is modified pursuant to the provisions of this bill.

**6. Budget Amendment Necessary:** See Item 8 below.

**7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.

**8. Fiscal Implications:** This bill would allow an incarcerated person to petition a circuit court for modification of their sentence if they have served at least 15 years of their sentence and i) they have not filed a petition for modification within the previous three years, ii) they have not had a sentence modification based on this process within the past five years, and iii) they have not filed more than two petitions for modification of a sentence under this process.

According to the Department of Corrections (DOC), as of December 31, 2023, there were 4,887 state-responsible (SR) inmates who meet the length of stay criteria set forth in this bill and would be eligible to file a petition for sentence modification. Any impact on SR bed space would depend on how many these inmates file a petition outlined in the proposal and on the decisions of the courts hearing these petitions.

The bill requires that, whenever a person becomes eligible to petition for modification of a sentence pursuant to this section, DOC must notify such person of his eligibility within 30 days of becoming eligible and provide the following to the inmate: a copy of this provisions of the law; the form for the fillable petition provided by the Supreme Court of Virginia, and all information necessary to complete such form. The notification must be provided to each eligible individual in his primary language. Upon request of the petitioner or counsel for the petitioner, the DOC must provide any records, electronic and paper, associated with the petitioner, without cost, including sentencing orders, program enrollment and completion, security status, case plan documentation, risk assessment data and evaluation, medical records, and any other relevant records. A copy of any such records provided must also be provided to the court and the attorney for the Commonwealth. According to DOC, the workload created by this provision would require up to 18 new Program Support Technicians at a cost of \$71,398 each (salary and benefits included) from the general fund per year.

The bill requires the circuit court to enter an order of transportation, at the request of the petitioner or counsel for the petitioner, to transfer the petitioner to the local or regional correctional facility serving the circuit court in which the petition was filed so that the petitioner is reasonably able to assist his attorney in the preparation of the petition. The bill does not specify which entity is responsible for providing such transportation; however, this requirement is likely to have a fiscal impact on either DOC or the local or regional jail involved. The impact on local and regional jails cannot be determined at this time.

The bill allows the courts to place offenders on probation for such time as the court determines. DOC reports that additional probation and parole resources may be needed depending on the extent to which the courts choose this option. The agency's current ratio of probationers to probation (P&P) officers is currently 74 to 1. DOC estimates that each additional probation and parole officer needed would cost \$76,810. However, the number of inmates who may be placed on probation is not known and the cost for additional P&P officers would be offset by releasing inmates from state and local facilities.

According to DOC, this bill will require modifications to CORIS, which DOC uses to track offender data. The estimated cost to make the required modifications is estimated at \$360,000. It is expected that DOC could absorb the costs related to these modifications. DOC estimates that modifications required by this bill may take 18 to 24 months from the time the bill becomes effective.

The bill allows a person convicted of a crime that is subsequently repealed or for which the penalty or sentencing range is subsequently reduced to petition the circuit court that entered the original judgment or order for modification of their sentence at any time. Such person

automatically qualifies for modification of his sentence, regardless of whether good cause is shown. The bill requires the court to modify the sentence to be in compliance with the penalties for the offense in effect on the date of the hearing on the petition for modification of a sentence.

Eligible persons petitioning for modification of their sentence are also able to petition for assistance of counsel, and such counsel must be appointed if the petitioner meets the necessary indigency requirements provided in Article 3 of Chapter 10 in Title 19.2. In such instance that counsel is appointed for the petitioner, they will 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 prohibits charging fees for filing such petitions. The circuit court's decision to dismiss a petition or modify a sentence cannot not form the basis for relief in any habeas corpus or appellate proceeding unless such decision was contrary to law.

The Office of the Executive Secretary of the Supreme Court (OES) reports that because the bill does not limit eligible individuals to only one remedy, it is assumed that most eligible individuals will file a petition for a modification of sentence with the circuit court, as doing so will improve their chances for some relief. Depending on the number of eligible inmates who petition for sentence modification, assuming that they would qualify as indigent, and assuming a \$1,235 fee cap for court-appointed attorneys who provide felony representation (i.e., Class 1 felonies, felonies punishable by confinement of more than 20 years, and other felonies) the impact on the Criminal Fund in the first year is expected to be significant in FY 2025 (first year of enactment). The number of persons applying for sentence modification based on having served 15 years in FY 2026 would likely drop precipitously, as it would only encompass persons who were ineligible to file in the previous year (e.g., persons who had only served 14 years of their sentence by FY 2025) since persons who had petitioned in the previous year would be time-barred for three years according to the bill.

The bill would also allow an appeal of the circuit court's decision to the Court of Appeals. The number of appeals is difficult to predict and thus the fiscal impact is indeterminate. However, 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 defaulted or waived. Because of this, OES reports that the Court of Appeals may need additional Deputy Clerk positions and additional Staff Attorney positions in the future to adequately handle this additional workload. In addition, 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 may require additional clerk positions and additional staff attorney positions. In addition, the impact to the Criminal Fund

for appointed counsel representation during such Supreme Court of Virginia appeals, at an estimated \$1,300 per appeal.

According to the Office of Attorney General, this bill is expected to increase the workload of the office's Correctional Litigation and Criminal Appeals sections. The number of cases that would be referred to the OAG is unknown at this time. To the extent the bill has a litigation impact on the OAG, the general fund cost for each senior staff attorney is \$172,297 per year and each associate staff attorney is \$140,752 per year. Each paralegal position would cost \$100,178 per year, each legal secretary would cost \$86,965 per year, and each administrative position would cost \$104,152 per year. Costs include salary and benefits.

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

**9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, local and regional jails, Office of Attorney General, Commonwealth's Attorneys, Virginia Indigent Defense Commission, Virginia Criminal Sentencing Commission, Department of State Police, Courts

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None