

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: HB906

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

2. Patron: Coyner

3. Committee: Courts of Justice

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

5. Summary: This bill establishes a process for anyone who is serving a sentence for any conviction or a combination of any convictions, who remains incarcerated in a state or local correctional facility, and who meets certain age, length of stay, and behavior criteria enumerated in the bill 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 sets out factors that must be considered in determining whether there is good cause to modify the petitioner's sentence.

The bill allows any person eligible for modification of a sentence to 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 bill requires the court to appoint counsel to represent the petitioner that if the court finds that the person is entitled to such representation and provides that an attorney appointed to represent a petitioner 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 prohibits charging fees for filing such petitions.

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 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.

The bill requires the Department of Corrections to provide eligibility information to inmates within 30 days of eligibility and to provide copies of certain records to petitioners, to counsel for petitioners and to the court and the Commonwealth Attorney at no cost. The bill also requires DOC to ensure that any counsel appointed to represent a petitioner confined in a state correctional facility has an opportunity to have reasonable contact with his client, whether in person, by telephone, or by mail.

The bill provides that person convicted of a crime that is subsequently repealed or for which the penalty or sentencing range is subsequently reduced may petition the circuit court that entered the original judgment or order for modification of his sentence pursuant to this section at any time, and that such person automatically qualifies for modification of his sentence, regardless of whether good cause is shown. Under these circumstances, the court is required 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.

6. **Budget Amendment Necessary:** Yes. Items 61 and 404.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** This bill allows anyone who is incarcerated in a state or local facility to petition for a modification of their sentence if he 1) has served at least 10 years of his sentence if he was 25 years of age or younger at the time of the offense or has served at least 15 years of his sentence if he was 26 years of age or older at the time of the offense and 2) meets certain behavioral standards set out in the bill.

According to the Department of Corrections, as of December 31, 2021, there were 1,437 State Responsible (SR) inmates who meet the age, length of stay, and behavior while incarcerated criteria set forth in this bill and would be eligible to petition their sentencing courts for re-sentencing. Of these 1,437 inmates: 614 committed all of their offenses on or before turning 25 years old and have served at least 10 years of their sentence(s); 657 committed all of their offenses after turning 25 years old and have served at least 15 years of their sentence(s); 166 committed multiple offenses both on or before turning 25 years old and after turning 25 years old and have served at least 15 years of their sentences.

Under the provisions of this bill, these inmates would be able to petition the court for a modification to their sentences. However, the impact this bill may have on the state-responsible population, including any savings as a result of releasing inmates from incarceration, would depend on the final decisions made by the courts. The cost of a bed in a DOC facility (prison) in FY2020 was \$36,305 as calculated by the Department of Planning and Budget. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local 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 bill requires that, whenever a person becomes eligible to petition for modification of a sentence pursuant to this section, the Department of Corrections (DOC) must notify such person of his eligibility and provide the following to the inmate within 30 days of such person becoming eligible: 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 requested and 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 additional staff and resources up to ten new Program Support Technicians at a total cost of \$641,590 (salary and benefits) 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 bill allows the courts to place offenders on probation for such time as the court shall determine. 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 72 to one. DOC estimates that each additional probation and parole officer needed would cost \$77,374. 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. The Introduced budget includes \$1.1 million in FY 2023 and \$1.3 million in FY 2024 from the general fund to hire 19 new P&P officers to implement the enhanced earned-sentence-credit structure that is scheduled to become effective on July 1, 2022. These new positions may mitigate the additional workload caused by this bill.

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. This one-time cost may be able 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 estimates that modifications required by this bill may take 18 to 24 months from the time the bill becomes effective.

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. Additionally, the number of petitioners who may be eligible for court-appointed counsel under the provisions of this bill, which would impact the Criminal Fund, is not known at this time.

According to the Office of Attorney General (OAG), this bill is expected to increase lawsuits filed by or on behalf of inmates. As a result, OAG estimates that the workload created by this bill may require the addition of two Attorney I positions, at a cost of \$138,598 each, two Attorney II positions, at a cost of \$159,987 each, one paralegal position at a cost of \$110,819, and one legal secretary, at a cost of \$100,199 (position costs include salaries and benefits). Costs estimated by the OAG total \$808,188 general fund each year.

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, Courts

10. Technical Amendment Necessary: No

11. Other Comments: None