

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 767

An Act to amend and reenact §§ 18.2-10, 19.2-295.2, 53.1-136, 53.1-157, 53.1-161, 53.1-162, 53.1-164, 53.1-165, 53.1-172 and 53.1-174 of the Code of Virginia, relating to postrelease supervision of felons.

[S 125]

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-10, 19.2-295.2, 53.1-136, 53.1-157, 53.1-161, 53.1-162, 53.1-164, 53.1-165, 53.1-172 and 53.1-174 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-10. Punishment for conviction of felony.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than twenty years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than twenty years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than ten years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than ten years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, *except in cases in which the court orders a suspended term of confinement of at least six months*, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of postrelease supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

§ 19.2-295.2. Postrelease supervision of felons sentenced for offenses committed on and after January 1, 1995, and on and after July 1, 2000.

A. At the time the court imposes sentence upon a conviction for any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, in addition to any other punishment imposed if such other punishment includes an active term of incarceration in a state or local correctional facility, *except in cases in which the court orders a suspended term of confinement of at least six months*, impose a term ~~in addition to the active term of postrelease supervision~~ of not less than six months nor more than three years, as the court may determine. Such additional term shall be suspended and the defendant placed under postrelease supervision upon release from the active term of incarceration. The period of supervision shall be established by the court; however, such period shall not be less than six months nor more than three years. Periods of postrelease supervision imposed pursuant to this section upon more than one felony conviction may be ordered to run concurrently. Periods of postrelease supervision imposed pursuant to this section may be ordered to run concurrently with any period of probation the defendant may also be subject to serve.

B. The period of postrelease supervision shall be ~~conducted in the same manner as a like period of supervised probation, including a requirement that the defendant shall abide by such terms and conditions as the court may establish under the supervision and review of the Virginia Parole Board. The Board shall review each felon prior to release and establish conditions of postrelease supervision.~~ Failure to successfully abide by such terms and conditions shall be grounds to terminate the period of postrelease supervision and recommit the defendant to the Department of Corrections or to the local correctional facility from which he was previously released. Procedures for any such termination and recommitment shall be conducted in the same manner as procedures for the revocation of ~~probation and~~

~~imposition of a suspended sentence parole.~~

C. Postrelease supervision programs shall be operated through the probation and parole districts established pursuant to § 53.1-141.

D. Nothing in this section shall be construed to prohibit the court from exercising any authority otherwise granted by law.

§ 53.1-136. Powers and duties of Board.

In addition to the other powers and duties imposed upon the Board by this article, the Board shall:

1. Adopt, subject to approval by the Governor, general rules governing the granting of parole;

2. (a) Release on parole, in accordance with its rules, for such time and upon such terms and conditions as the Board shall prescribe, persons convicted of felonies and confined under the laws of the Commonwealth in any correctional facility in Virginia when those persons become eligible and are found suitable for parole;

(b) Establish the conditions of postrelease supervision authorized pursuant to §§ 18.2-10 and 19.2-295.2 A;

3. Revoke parole and *any period of postrelease and* order the reincarceration of any parolee *or felon serving a period of postrelease supervision* when, in the judgment of the Board, he has violated the conditions of his parole, *postrelease supervision* or is otherwise unfit to be on parole *or on postrelease supervision*;

4. Issue final discharges to persons released by the Board on parole when the Board is of the opinion that the discharge of the parolee will not be incompatible with the welfare of such person or of society;

5. Make investigations and reports with respect to any commutation of sentence, pardon, reprieve or remission of fine or penalty when requested by the Governor; and

6. Publish monthly a statement regarding the action taken by the Board on the parole of prisoners. The statement shall list the name of each prisoner considered for parole and indicate whether parole was granted or denied.

§ 53.1-157. Parolees or felons serving a period of postrelease supervision to comply with terms; furnishing copies.

Each parolee *or felon serving a period of postrelease supervision* while on parole *or period of postrelease supervision* shall comply with such terms and conditions as may be prescribed by the Board. When any prisoner is released on parole *or postrelease period of supervision*, the Board shall furnish the parolee and the probation and parole officer having supervision of the parolee *or felon serving a period of postrelease supervision* a copy of the terms and conditions of the parole *or postrelease period of supervision* and any changes which may from time to time be made therein.

§ 53.1-161. Arrest and return of parolee or felon serving a period of postrelease supervision; warrant; release pending adjudication of violation.

The Chairman or any member of the Board may at any time upon information or a showing of a violation or a probable violation by any parolee *or felon serving a period of postrelease supervision* of any of the terms or conditions upon which he was released on parole *or postrelease period of supervision*, issue or cause to be issued, a warrant for the arrest and return of the parolee *or felon serving a period of postrelease supervision* to the institution from which he was paroled, or to any other correctional facility which may be designated by the Chairman or member. However, a determination of whether a parolee *or felon serving a period of postrelease supervision* returned to a correctional facility pursuant to this section shall be returned to a state or local correctional facility shall be made based on the length of the parolee's original sentence as set forth in § 53.1-20 *or the period of postrelease supervision as set at sentencing*. Each such warrant shall authorize all officers named therein to arrest and return the parolee to actual custody in the facility from which he was paroled, or to any other facility designated by the Chairman or member.

In any case in which the parolee *or felon serving a period of postrelease supervision* is charged with the violation of any law, the violation of which caused the issuance of such warrant, upon request of the parolee or his attorney, the Chairman or member shall as soon as practicable consider all the circumstances surrounding the allegations of such violation, including the probability of conviction thereof, and may, after such consideration, release the parolee, pending adjudication of the violation charged.

§ 53.1-162. Arrest of parolee or felon serving a period of postrelease supervision without warrant; written statement.

Any probation and parole officer may arrest a parolee *or felon serving a period of postrelease supervision* without a warrant or may deputize any other officer with power of arrest to do so by a written statement setting forth that the parolee *or felon serving a period of postrelease supervision* has, in the judgment of the probation and parole officer, violated one or more of the terms or conditions of his parole *or postrelease period of supervision*. Such a written statement by a probation and parole officer delivered to the officer in charge of any state or local correctional facility shall be sufficient warrant for the detention of the parolee *or felon serving a period of postrelease supervision*.

§ 53.1-164. Procedure for return of parolee or felon serving a period of postrelease supervision.

When any parolee *or felon serving a period of postrelease supervision* is returned to any facility in

accordance with the provisions of § 53.1-161, he shall be held in accordance with rules of the Board of Corrections and subject to further action of the Parole Board. The officer in charge of the facility shall see that the Parole Board is notified promptly of each such parolee's *or felon's* return.

§ 53.1-165. Revocation of parole or postrelease supervision; hearing; procedure for parolee or felon serving period of postrelease supervision in another state; appointment of attorney.

A. Whenever any parolee *or felon serving a period of postrelease supervision* is arrested and recommitted as provided herein, a preliminary hearing to determine probable cause that such parolee has violated one or more of the terms or conditions upon which he was released on parole *or postrelease period of supervision* shall be held by any hearing officer who has been designated as such by the Director of the Department to conduct such hearings. However, if a nolle prosequi is to be entered in a case where a parole violation is alleged, no preliminary hearing shall be required.

Upon request of the hearing officer, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of such jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in any proceedings held before him. Each attorney so appointed shall be available to serve upon request of the hearing officer. The term of each attorney's appointment shall continue until such time as a successor may be appointed. A hearing officer shall be authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before him and to administer oaths and to take testimony thereunder.

Upon a finding of probable cause by the hearing officer, the Board or its authorized representative shall conduct a hearing, consider the case and act with reference thereto within a reasonable time thereafter. Upon request of the Board, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of that jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in proceedings held or to be held before the Board. Each attorney shall be available to serve upon request of the Board. The term of each attorney's appointment shall continue until such time as a successor may be appointed. The Board, in its discretion, may revoke the parole and order the reincarceration of the prisoner for the unserved portion of the term of imprisonment originally imposed upon him, or it may reinstate the parole either upon such terms and conditions as were originally prescribed, or as may be prescribed in addition thereto or in lieu thereof. When a parole violation is based on a new felony conviction for which the individual has been sentenced to two or more years, excluding any time of said sentence which has been suspended, any individual Board member, so authorized by the Board, may after such hearing revoke the individual's parole as otherwise provided herein.

B. In cases in which a parolee *or felon serving a period of postrelease supervision* is in another state, any hearing officer who has been designated as such by the Director of the Department may be sent to that state to conduct a preliminary hearing to determine probable cause that the parolee has violated one or more of the terms and conditions upon which he was released upon parole.

C. Any attorney-at-law appointed pursuant to this section shall be paid as directed by the court making the appointment, from funds appropriated for court costs and expenses, reasonable compensation on an hourly basis and necessary expenses, based upon a report to be furnished to it by such attorney. In the event an attorney-at-law is appointed in another state, he shall be paid out of funds appropriated to the Department.

§ 53.1-172. Hearings for parolees, probationers or felons serving a period of postrelease supervision being supervised in another state.

In any case of alleged parole, *postrelease period of supervision*, or probation violation by a person being supervised in another state pursuant to the Interstate Compact for Out-of-State Supervision of Parolees or Probationers, any appropriate judicial or administrative authority in another state, upon request by the compact administrator of this Commonwealth or his designee, is authorized to hold a hearing on the alleged violation, which hearing shall be substantially similar to the hearing required by this article. Upon receipt of the record of a parole, *postrelease period of supervision*, or probation violation hearing held in another state pursuant to a statute substantially similar to this article, such record shall be conclusive and shall not be reviewable within or by this Commonwealth.

§ 53.1-174. Preliminary hearings by other states.

In any case in which any person placed on parole *or postrelease period of supervision* by Virginia is present in another state, if such person is not present in such other state pursuant to the provisions of Article 4 (§ 53.1-166 et seq.), upon request by the compact administrator of Virginia or his designee, the appropriate judicial or administrative authorities of such other state in which such person is present, having jurisdiction to conduct preliminary hearings to determine probable cause for violation of conditions of parole *or postrelease period of supervision*, shall cause to be conducted a preliminary hearing to determine probable cause for violation of conditions of parole. Such preliminary hearing shall be substantially similar to the hearing provided for in §§ 53.1-168 through 53.1-172. A decision thereon shall be conclusive and shall not be reviewable within or by Virginia.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation

is \$0 in FY 2010.