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SENATE BILL NO. 125

Offered January 12, 2000

A *BILL 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, 53.1-171, 53.1-172 and 53.1-174 of the Code of Virginia, relating to post-release supervision of felons.*

Patron—Norment

Referred to Committee on Rehabilitation and Social Services

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, 53.1-171, 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*, 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 post-release 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. Post-release 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, impose a term ~~in addition to the active term of post-release 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 post-release 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 post-release supervision imposed pursuant to this section upon more than one felony conviction may be ordered to run concurrently. Periods of post-release 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 post-release 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. The period of post-release supervision shall be under the supervision and review of the Virginia Parole Board. The Board shall review each felon prior to release and establish conditions of post-release supervision.~~ Failure to successfully abide by such terms and conditions shall be grounds to terminate the period of post-release supervision and recommit the defendant to the Department of Corrections or to the local correctional facility from which he was

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60 previously released. Procedures for any such termination and recommitment shall be conducted in the
61 same manner as procedures for the revocation of ~~probation and imposition of a suspended sentence~~
62 ~~parole~~.

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

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

67 § 53.1-136. Powers and duties of Board.

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

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

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

74 (b) *Establish the conditions of post-release supervision authorized pursuant to §§ 18.2-10 and*
75 *19.2-295.2 A;*

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

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

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

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

87 § 53.1-157. Parolees or felons serving a period of post release supervision to comply with terms;
88 furnishing copies.

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

95 § 53.1-161. Arrest and return of parolee or felon serving a period of post release supervision;
96 warrant; release pending adjudication of violation.

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

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

115 § 53.1-162. Arrest of parolee or felon serving a period of post release supervision without warrant;
116 written statement.

117 Any probation and parole officer may arrest a parolee *or felon serving a period of post-release*
118 *supervision* without a warrant or may deputize any other officer with power of arrest to do so by a
119 written statement setting forth that the parolee *or felon serving a period of post-release supervision* has,
120 in the judgment of the probation and parole officer, violated one or more of the terms or conditions of
121 his parole *or post-release 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 post-release supervision*.

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

When any parolee *or felon serving a period of post-release 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 post release supervision; hearing; procedure for parolee or felon serving period of post release supervision in another state; appointment of attorney.

A. Whenever any parolee *or felon serving a period of post-release 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 post-release 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 post-release 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 post release supervision being supervised in another state.

In any case of alleged parole, *post-release 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, *post-release 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 post-release 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,

183 having jurisdiction to conduct preliminary hearings to determine probable cause for violation of
184 conditions of parole *or post-release period of supervision*, shall cause to be conducted a preliminary
185 hearing to determine probable cause for violation of conditions of parole. Such preliminary hearing shall
186 be substantially similar to the hearing provided for in §§ 53.1-168 through 53.1-172. A decision thereon
187 shall be conclusive and shall not be reviewable within or by Virginia.
188 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
189 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
190 **is \$0 in FY 2010.**