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SENATE BILL NO. 634

Offered January 18, 2002

A BILL to amend and reenact § 19.2-306 of the Code of Virginia, relating to revocation of suspended sentence.

Patron—Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-306 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-306. Revocation of suspension of sentence and probation.

The A. In any case in which the court may, for any cause deemed by it sufficient which occurred at any time within the probation period; or if none, within the period of suspension fixed by the court, or if neither, within the maximum period for which the defendant might originally have been sentenced to be imprisoned, has suspended the execution or imposition of sentence, the court may revoke the suspension of sentence and any probation, if the defendant be on probation, and cause the defendant to be arrested and brought before the court at any time within one year after the probation period; or if no probation period has been prescribed then within one year after the period of suspension fixed by the court, or if neither a probation period nor a period of suspension has been prescribed then within one year after for any cause the court deems sufficient that occurred at any time within the probation period, or within the period of suspension fixed by the court. If neither a probation period nor a period of suspension was fixed by the court, then the court may revoke the suspension for any cause the court deems sufficient that occurred within the maximum period for which the defendant might originally have been sentenced to be imprisoned; whereupon, in case the imposition of sentence has been suspended, the court may pronounce whatever sentence might have been originally imposed. In case the execution of the sentence has been suspended, the original sentence shall be in full force and effect, and neither the time of probation or of suspension shall be taken into account to diminish the original sentence. In the event that any person placed on probation shall leave the jurisdiction of the court without the consent of the judge, or having obtained leave to remove to another locality violates any of the terms of his probation, he may be apprehended and returned to the court and dealt with as provided above. Provided, however, that nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit court having criminal jurisdiction from a judgment or order revoking any suspended sentence. Provided, further, that if any

B. The court may not conduct a hearing to revoke the suspension of sentence unless the court, within one year after the expiration of the period of probation or the period of suspension, issues process to notify the accused or to compel his appearance before the court. If neither a probation period nor a period of suspension was fixed by the court, then the court shall issue process within one year after the expiration of the maximum period for which the defendant might originally have been sentenced to be incarcerated. Such notice and service of process may be waived by the defendant, in which case the court may proceed to determine whether the defendant has violated the conditions of suspension.

C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke the suspension, and the court may pronounce whatever sentence might have been originally imposed or (ii) if the court originally suspended the execution of the sentence, the court shall revoke the suspension and the original sentence shall be in full force and effect. The court may again suspend all or any part of this sentence and may place the defendant upon terms and conditions or probation.

D. If any court has, after hearing, found no cause to impose a sentence which that might have been originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a sentence, or revoke a suspended sentence or probation, based solely on the alleged violation for which the hearing was held, shall be barred.

E. Nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit court having criminal jurisdiction from a judgment or order revoking any suspended sentence.

INTRODUCED

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