

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 459

An Act to amend and reenact §§ 17.1-805, 18.2-124, 18.2-374.3, and 19.2-299 of the Code of Virginia and to repeal §§ 18.2-111.1, 18.2-114, 18.2-123, 18.2-161, 18.2-202, 18.2-203, 18.2-211, 18.2-351, 18.2-352, 18.2-353, 18.2-358, and 18.2-367 of the Code of Virginia, relating to the revision of Title 18.2; repeal of certain statutes.

[H 1055]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-805, 18.2-124, 18.2-374.3, and 19.2-299 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery, shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ 40 years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of ~~forty~~ 40 years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ 40 years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than ~~forty~~ 40 years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ 40 years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving or distributing, or possessing with the intent to manufacture, sell, give or distribute a Schedule I or II controlled substance shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ 40 years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2 or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ 40 years, and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ 40 years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories.

C. For purposes of this chapter, violent felony offenses shall include any violation of §§ 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or § 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or § 18.2-41; any Class 5 felony violation of § 18.2-47; any felony violation of §§ 18.2-48, 18.2-48.1 or § 18.2-49; any violation of §§ 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or § 18.2-55; any felony violation of § 18.2-57.2; any

violation of § 18.2-58 or § 18.2-58.1; any felony violation of § 18.2-60.1 or § 18.2-60.3; any violation of §§ 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or § 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92 or § 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any violation of subsection B of § 18.2-280; any violation of §§ 18.2-281, 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of subsection A of § 18.2-300; any felony violation of §§ 18.2-308.1 and 18.2-308.2; any violation of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or § 18.2-312; any violation of subdivision (2) or (3) of § 18.2-355; any violation of *former* § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of §§ 18.2-368, 18.2-370 or § 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or § 18.2-406; any violation of §§ 18.2-408, 18.2-413, 18.2-414 or § 18.2-433.2; any felony violation of §§ 18.2-460, 18.2-474.1 or § 18.2-477.1; any violation of §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485; any violation of § 53.1-203; or any conspiracy or attempt to commit any offense specified in this subsection, and any substantially similar offense under the laws of any state, the District of Columbia, the United States or its territories.

§ 18.2-124. Jurisdiction over offenses committed in Capitol Square.

The Circuit Court of the City of Richmond shall have jurisdiction to try cases of offenses committed in Capitol Square except as hereinafter provided. The ~~District Court~~ *district court* of the City of Richmond shall have jurisdiction to try *misdemeanor* cases of ~~misdemeanor~~ arising under §§ 18.2-122 and 18.2-123, and all other offenses committed in the Capitol Square of which it would have jurisdiction if committed within the corporate limits and jurisdiction of the city; and the Capitol Police, or any member thereof, shall have the same authority to arrest and to swear out warrants for offenses committed on the Capitol Square as policemen of the City of Richmond have to arrest or to swear out warrants for offenses committed within the jurisdiction of the city.

§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.

A. It shall be unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or § 18.2-374.1. A violation of this section shall be punishable as *subsection is* a Class 6 felony.

B. It shall be unlawful for any person over the age of 18 to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child less than 18 years of age for (i) any activity in violation of §§ 18.2-355, ~~18.2-358~~, 18.2-361 or § 18.2-370, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1. As used in this subsection, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications system. A violation of this section shall be punishable as *subsection is* a Class 5 felony.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall, or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty, or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, ~~18.2-358~~, 18.2-361, 18.2-362, 18.2-366, ~~18.2-367~~, 18.2-368, 18.2-370, 18.2-370.1, or § 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of §§ 18.2-67.5, 18.2-67.5:2, or § 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to

sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

2. That §§ 18.2-111.1, 18.2-114, 18.2-123, 18.2-161, 18.2-202, 18.2-203, 18.2-211, 18.2-351, 18.2-352, 18.2-353, 18.2-358, and 18.2-367 of the Code of Virginia are repealed.