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HOUSE BILL NO. 1148

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 17.1-805 of the Code of Virginia, relating to sentencing guidelines.

Patrons—McDonnell, Albo and Kilgore; Senators: Howell and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 17.1-805 of the Code of Virginia is 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 *solicitation to commit murder under § 18.2-29*; 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, 18.2-46.5, 18.2-46.6, 18.2-46.7; 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,

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59 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
60 § 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,
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
62 conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of
63 subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of
64 § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any
65 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
66 Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony
67 violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an
68 occupied dwelling; any violation of subsection B of § 18.2-280; any violation of §§ 18.2-281,
69 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of
70 subsection A of § 18.2-300; any felony violation of §§ 18.2-308.1 and 18.2-308.2; any violation of
71 § 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
72 violation of subdivision (2) or (3) of § 18.2-355; any violation of § 18.2-358; any violation of subsection
73 B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of §§ 18.2-368, 18.2-370 or
74 § 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting
75 in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1;
76 any violation of § 18.2-374.3; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any
77 felony violation of § 18.2-405 or § 18.2-406; any violation of §§ 18.2-408, 18.2-413, 18.2-414 or
78 § 18.2-433.2; any felony violation of §§ 18.2-460, 18.2-474.1 or § 18.2-477.1; any violation of
79 §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485; any violation of § 53.1-203; or any conspiracy or attempt
80 to commit any offense specified in this subsection, and any substantially similar offense under the laws
81 of any state, the District of Columbia, the United States or its territories.

82 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
83 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
84 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
85 **periods of commitment to the custody of the Department of Juvenile Justice.**