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HOUSE BILL NO. 859

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 18.2-8, 18.2-10, 18.2-22, 18.2-25, and 19.2-152.2 of the Code of Virginia and to repeal §§ 17.1-313, 17.1-406 and 18.2-17 of the Code of Virginia, relating to the death penalty.

Patrons—Hargrove, Callahan, Ebbin, Eisenberg, Englin and Plum; Senator: Marsh

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-8, 18.2-10, 18.2-22, 18.2-25, and 19.2-152.2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-8. Felonies, misdemeanors and traffic infractions defined.

Offenses are either felonies or misdemeanors. Such offenses as are punishable with death or confinement in a state correctional facility are felonies; all other offenses are misdemeanors. Traffic infractions are violations of public order as defined in § 46.2-100 and not deemed to be criminal in nature.

§ 18.2-10. Punishment for conviction of felony.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, ~~death, if the person so convicted was 16 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under 16 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.~~ Any person sentenced to life imprisonment pursuant to this subsection shall not be eligible for parole and shall not be eligible for any good conduct allowance, any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1, or conditional release pursuant to § 53.1-40.01.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 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 20 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 10 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 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 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 12 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 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.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

§ 18.2-22. Conspiracy to commit felony.

(a) If any person shall conspire, confederate or combine with another, either within or without this Commonwealth, to commit a felony within this Commonwealth, or if he shall so conspire, confederate

INTRODUCED

HB859

59 or combine with another within this Commonwealth to commit a felony either within or without this
60 Commonwealth, he shall be guilty of a felony which shall be punishable as follows:

61 (1) Every person who so conspires to commit an offense which is punishable ~~by death as a Class 1~~
62 ~~felony~~ shall be guilty of a Class 3 felony;

63 (2) Every person who so conspires to commit an offense which is a noncapital felony shall be guilty
64 of a Class 5 felony; and

65 (3) Every person who so conspires to commit an offense the maximum punishment for which is
66 confinement in a state correctional facility for a period of less than five years shall be confined in a
67 state correctional facility for a period of one year, or, in the discretion of the jury or the court trying the
68 case without a jury, may be confined in jail not exceeding twelve months and fined not exceeding \$500,
69 either or both.

70 (b) However, in no event shall the punishment for a conspiracy to commit an offense exceed the
71 maximum punishment for the commission of the offense itself.

72 (c) Jurisdiction for the trial of any person accused of a conspiracy under this section shall be in the
73 county or city wherein any part of such conspiracy is planned or in the county or city wherein any act
74 is done toward the consummation of such plan or conspiracy.

75 (d) The penalty provisions of this section shall not apply to any person who conspires to commit any
76 offense defined in Chapter 34 of Title 54.1 or of Article 1 (§ 18.2-247 et seq.), Chapter 7 of this title.
77 The penalty for any such violation shall be as provided in § 18.2-256.

78 § 18.2-25. Attempts to commit capital offenses; how punished.

79 If any person attempts to commit an offense which is punishable ~~with death as a Class 1 felony~~, he
80 shall be guilty of a Class 2 felony.

81 § 19.2-152.2. Purpose; establishment of program.

82 It is the purpose of this article to provide more effective protection of society by establishing
83 programs that will assist judicial officers in discharging their duties pursuant to Article 1 (§ 19.2-119 et
84 seq.) of Chapter 9 of this title. Such programs are intended to provide better information and services
85 for use by judicial officers in determining the risk to public safety and the assurance of appearance of
86 persons age 18 or over or persons under the age of 18 who have been transferred for trial as adults held
87 in custody and charged with an offense, other than an offense punishable ~~by death as a Class 1 felony~~,
88 who are pending trial or hearing. Any city, county or combination thereof may establish a pretrial
89 services program and any city, county or combination thereof required to submit a community-based
90 corrections plan pursuant to § 53.1-82.1 shall establish a pretrial services program.

91 **2. That §§ 17.1-313, 17.1-406, and 18.2-17 of the Code of Virginia are repealed.**

92 **3. That the provisions of this act shall apply to Class 1 felonies committed on or after July 1,**
93 **2006.**

94 **4. That the provisions of this act may result in a net increase in periods of imprisonment or**
95 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
96 **\$60,807 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of**
97 **commitment to the custody of the Department of Juvenile Justice.**