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HOUSE BILL NO. 2756

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 18.2-479 and 19.2-306 of the Code of Virginia, relating to probation and suspended sentence violations.

Patron—Hurt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-479 and 19.2-306 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-479. Escape without force or violence or setting fire to jail.

A. ~~Except as provided in subsection B, any~~ Any person lawfully confined in jail or lawfully in the custody of any court, officer of the court, or of any law-enforcement officer for ~~violation of his probation or parole or on a misdemeanor charge or after conviction of a misdemeanor~~, who escapes, other than by force or violence or by setting fire to the jail, is guilty of a Class 1 misdemeanor.

B. Any person, lawfully confined in jail or lawfully in the custody of any court, officer of the court, or of any law-enforcement officer ~~on~~for a felony charge or after conviction of a felony, who escapes, other than by force or violence or by setting fire to the jail, is guilty of a Class 6 felony.

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

A. In any case in which the court has suspended the execution or imposition of sentence, the court may revoke the suspension of sentence 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.

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 *show cause* process to notify the accused or a warrant or *capias* for his arrest 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 *such show cause* process, warrant, or *capias* within one year after the expiration of the maximum period for which the defendant might originally have been sentenced to be incarcerated. ~~Such notice~~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. Any warrant or *capias* issued by or at the direction of a court for the arrest of any person for violation of the terms of a suspended sentence or probation shall be considered a misdemeanor charge if the underlying charge for which the suspended sentence or probation was imposed is a misdemeanor and shall be considered a felony charge if the underlying charge for which the suspended sentence or probation was imposed is a felony. The document shall state whether the violation charged on the warrant or *capias* is a misdemeanor or felony.

D. 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~~E. If any court has, after hearing, found no cause to impose a sentence 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~~F. 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 of a district court revoking any suspended sentence.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$15,299 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

HB2756