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HOUSE BILL NO. 1366

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact § 19.2-303 of the Code of Virginia, relating to probation; waiver of Fourth Amendment rights as condition of probation.

Patron—Cline

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-303 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine. *Among the conditions the court may impose is that the person, vehicle or home of the defendant shall be subject to search without a warrant during the period of his probation when the search derives from a violation of other conditions imposed upon the defendant by the court or arises out of a suspicion that the defendant is engaged in conduct the same as that or substantially similar to that for which he was convicted, provided that such condition may be imposed only upon a defendant convicted of a felony violation under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or a violent felony as defined in § 17.1-805.* ~~or~~ The court may also, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of a felony, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a

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59 postrelease supervision program operated by the Department of Corrections, and for at least three years
60 of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS
61 (Global Positioning System) tracking device, or other similar device.

62 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any
63 time before the sentence has been completely served, suspend the unserved portion of any such sentence,
64 place the person on probation for such time as the court shall determine, or otherwise modify the
65 sentence imposed.

66 If a person has been sentenced for a felony to the Department of Corrections but has not actually
67 been transferred to a receiving unit of the Department, the court which heard the case, if it appears
68 compatible with the public interest and there are circumstances in mitigation of the offense, may, at any
69 time before the person is transferred to the Department, suspend or otherwise modify the unserved
70 portion of such a sentence. The court may place the person on probation for such time as the court shall
71 determine.