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HOUSE BILL NO. 1811

Offered January 14, 2009

Prefiled January 12, 2009

A BILL to amend and reenact §§ 18.2-67.5:1, 18.2-104, and 19.2-303.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-303.5, relating to deferred disposition.

 Patron—Morrissey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-67.5:1, 18.2-104, and 19.2-303.4 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 19.2-303.5 as follows:

§ 18.2-67.5:1. Punishment upon conviction of third misdemeanor offense.

When a person is convicted of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, a violation of § 18.2-371 involving consensual intercourse with a child, indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, or a violation of § 18.2-130, and it is alleged in the warrant, information or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the ten-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, he shall be guilty of a Class 6 felony. *For purposes of this section, a prior dismissal under § 19.2-303.5 of any offense listed in this section shall be considered a prior conviction.*

§ 18.2-104. Punishment for conviction of misdemeanor larceny.

When a person is convicted of an offense of larceny or any offense deemed to be or punished as larceny under any provision of the Code, and it is alleged in the warrant, indictment or information on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has been before convicted in the Commonwealth of Virginia or in another jurisdiction for any offense of larceny or any offense deemed or punishable as larceny, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies or a combination thereof, he shall be confined in jail not less than thirty days nor more than twelve months; and for a third, or any subsequent offense, he shall be guilty of a Class 6 felony. *A prior dismissal under § 19.2-303.5 of an offense deemed to be larceny or punished as larceny shall be considered a prior conviction for purposes of applying this section.*

§ 19.2-303.4. Payment of costs when proceedings deferred and defendant placed on probation.

A circuit or district court, which has deferred further proceedings, without entering a judgment of guilt, and placed a defendant on probation subject to terms and conditions pursuant to § 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251, 19.2-303.2, or 19.2-303.5 shall impose upon the defendant costs.

§ 19.2-303.5. *Deferred disposition in a criminal case.*

A. In any criminal case involving a misdemeanor offense, a Class 6 or Class 5 felony, forgery, or uttering of forged documents, larceny, or any offense deemed to be larceny, upon a plea of guilty, or after a plea of not guilty, and the facts found by the court would justify a finding of guilt, the court may, without entering a judgment of guilt and with the consent of the accused, after giving due consideration to the position of the attorney for the Commonwealth and the views of the victim, defer further proceedings and place the accused on probation subject to terms and conditions set by the court. Upon violation of a term or condition, the court may enter an adjudication of guilt or, upon fulfillment of the terms and conditions, may discharge the person and dismiss the proceedings against him without an adjudication of guilt. This section shall not limit the authority of any juvenile and domestic relations court granted to it in Title 16.1.

B. Deferred disposition shall be available to the defendant even though he has previously been convicted of a criminal offense, been adjudicated delinquent as a juvenile, or had proceedings deferred and dismissed under this section or under any other provision of law, unless, after having considered the position of the attorney for the Commonwealth, the views of the victims, and any evidence offered by the defendant, the court finds that deferred disposition is inconsistent with the interests of justice.

C. This section shall not apply to any offense charged under § 4.1-305, 15.2-1812.2, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251, 18.2-258.1, or 19.2-303.2, irrespective of whether the defendant

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59 *was convicted or had proceedings deferred and dismissed under any of these sections.*

60 *D. Deferred disposition under this section shall not be available for any violation of § 18.2-266 or*
61 *46.2-341.24; the ordinance of any county, city, or town in the Commonwealth substantially similar to*
62 *the provisions of § 18.2-266; any offense listed under § 9.1-902, regardless of whether a single*
63 *conviction for such an offense does or does not require registration; any offense listed under subsection*
64 *C of § 17.1-805; any offense deemed or punishable as voluntary or involuntary manslaughter; or any*
65 *felony in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2.*