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SENATE BILL NO. 1380

Offered January 14, 2009

Prefiled January 14, 2009

A *BILL to amend and reenact §§ 19.2-298.01 and 19.2-306 of the Code of Virginia, relating to court use of discretionary sentencing guidelines for probation revocation, etc.*

Patron—Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-298.01 and 19.2-306 of the Code of Virginia are amended and reenacted as follows:
§ 19.2-298.01. Use of discretionary sentencing guidelines.

A. In all felony cases, other than Class 1 felonies, *and in all probation revocation and sentence suspension revocation cases in which the defendant was under the direct supervision of the probation and parole district office*, the court shall (i) have presented to it the appropriate discretionary sentencing guidelines worksheets *or sentencing revocation report worksheets, as appropriate* and (ii) review and consider the suitability of the applicable discretionary sentencing guidelines established pursuant to Chapter 8 (§ 17.1-800 et seq.) of Title 17.1 *or the sentencing revocation report, as appropriate*. Before imposing sentence, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection. In cases tried by a jury, the jury shall not be presented any information regarding sentencing guidelines.

B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure.

C. In felony cases, other than Class 1 felonies, tried by a jury and in felony cases tried by the court without a jury upon a plea of not guilty *and in all probation revocation and sentence suspension revocation cases in which the defendant was under the direct supervision of the probation and parole district office*, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets *or sentencing revocation report worksheets, as appropriate*. In felony cases tried upon a plea of guilty, including cases which are the subject of a plea agreement, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the accused, the court and the attorney for the Commonwealth, the worksheets shall be prepared by the attorney for the Commonwealth.

D. Except as provided in subsection E, discretionary sentencing guidelines worksheets *and sentencing revocation report worksheets* prepared pursuant to this section shall be subject to the same distribution as presentence investigation reports prepared pursuant to subsection A of § 19.2-299.

E. Following the entry of a final order (i) *in a probation revocation and sentence suspension revocation case or* (ii) of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets *or sentencing revocation report worksheets* prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days. Similarly, the statement required by §§ 19.2-295 and 19.2-303 and regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the Virginia Criminal Sentencing Commission.

F. The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis of any other post-conviction relief.

G. The provisions of this section shall apply only to felony cases in which the offense is committed on or after January 1, 1995, and for which there are discretionary sentencing guidelines *and to all revocation of suspension cases filed on or after July 1, 2009*. For purposes of the discretionary sentencing guidelines only, a person sentenced to a boot camp incarceration program pursuant to § 19.2-316.1, a detention center incarceration program pursuant to § 19.2-316.2 or a diversion center incarceration program pursuant to § 19.2-316.3 shall be deemed to be sentenced to a term of incarceration.

§ 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, *in accordance with the suspended sentence revocation*

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59 *provisions of § 19.2-298.01*, for any cause the court deems sufficient that occurred at any time within
60 the probation period, or within the period of suspension fixed by the court. If neither a probation period
61 nor a period of suspension was fixed by the court, then the court may revoke the suspension for any
62 cause the court deems sufficient that occurred within the maximum period for which the defendant
63 might originally have been sentenced to be imprisoned.

64 B. The court may not conduct a hearing to revoke the suspension of sentence unless the court, within
65 one year after the expiration of the period of probation or the period of suspension, issues process to
66 notify the accused or to compel his appearance before the court. If neither a probation period nor a
67 period of suspension was fixed by the court, then the court shall issue process within one year after the
68 expiration of the maximum period for which the defendant might originally have been sentenced to be
69 incarcerated. Such notice and service of process may be waived by the defendant, in which case the
70 court may proceed to determine whether the defendant has violated the conditions of suspension.

71 C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of
72 suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke
73 the suspension, and the court may pronounce whatever sentence might have been originally imposed or
74 (ii) if the court originally suspended the execution of the sentence, the court shall revoke the suspension
75 and the original sentence shall be in full force and effect. The court may again suspend all or any part
76 of this sentence and may place the defendant upon terms and conditions or probation.

77 D. If any court has, after hearing, found no cause to impose a sentence that might have been
78 originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a
79 sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which
80 the hearing was held, shall be barred.

81 E. Nothing contained herein shall be construed to deprive any person of his right to appeal in the
82 manner provided by law to the circuit court having criminal jurisdiction from a judgment or order
83 revoking any suspended sentence.