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HOUSE BILL NO. 1299

Offered February 23, 2012

A BILL to amend and reenact §§ 19.2-303.5 and 19.2-306 of the Code of Virginia, relating to an immediate sanction probation program.

Patron—Bell, Robert B.

Introduced at the request of the Governor

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-303.5 and 19.2-306 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-303.5. Immediate sanction probation program.

There may be established in the Commonwealth up to two an immediate sanction probation programs program in accordance with the following provisions:

1. As a condition of a sentence suspended pursuant to § 19.2-303, a court may order a defendant convicted of a crime, other than a violent crime as defined in subsection C of § 17.1-805, to participate in an immediate sanction probation program.

2. If a participating offender fails to comply with any term or condition of his probation and the alleged probation violation is not that the offender committed a new crime or infraction; (i) his probation officer shall immediately issue a noncompliance letter pursuant to § 53.1-149 authorizing his arrest at any location in the Commonwealth and (ii) his probation violation hearing shall take priority on the court's docket. The probation officer may, in any event, exercise any other lawful authority he may have with respect to the offender.

3. When a participating offender is arrested pursuant to subdivision 2, the court shall conduct an immediate sanction hearing unless (i) the alleged probation violation is that the offender committed a new crime or infraction; (ii) the alleged probation violation is that the offender absconded for more than seven days; or (iii) the offender, attorney for the Commonwealth, or the court objects to such immediate sanction hearing. If the court conducts an immediate sanction hearing, it shall proceed pursuant to subdivision 4. Otherwise, the court shall proceed pursuant to § 19.2-306.

4. At the immediate sanction hearing, the court shall receive the noncompliance letter, which shall be admissible as evidence, and may receive other evidence. If the court finds good cause to believe that the offender has violated the terms or conditions of his probation, it may (i) revoke no more than 30 days of the previously suspended sentence and (ii) continue or modify any existing terms and conditions of probation. If the court does not modify the terms and conditions of probation or remove the defendant from the program, the previously ordered terms and conditions of probation shall continue to apply. The court may remove the offender from the immediate sanction probation program at any time.

5. The provisions of this section shall expire on July 1, 2012.

A. A person placed in the immediate sanction probation program shall be frequently reviewed by the probation and parole district office to ensure that there are no violations of the conditions of his suspended sentence. If a probation officer has reasonable cause to believe that a person in the immediate sanction probation program has violated any condition of his suspension, he shall, without exception, under the provisions of § 53.1-149, immediately arrest the offender or cause him to be arrested by issuing a noncompliance statement. The offender shall not be admitted to bail. After being taken into custody, the offender shall be brought before the court within 48 hours, except that if the offender is taken into custody on a Friday or the day before an extended holiday, his hearing before the court shall be given precedence on the docket. The probation officer may, in any event, exercise any other lawful authority he may have with respect to the offender.

B. When a participating offender is arrested pursuant to subsection B, the court shall conduct an expedited hearing unless (i) the alleged probation violation is that the offender committed a new felony offense or a misdemeanor for which a jail sentence can be imposed; (ii) the alleged probation violation is that the offender absconded for more than seven days; or (iii) the offender, the attorney for the Commonwealth, or the court objects to such expedited hearing. If the court conducts an expedited hearing, it shall proceed pursuant to subsection D; otherwise, the court shall proceed pursuant to § 19.2-306.

C. At the expedited hearing, the court shall receive a written noncompliance statement from the probation and parole district office, which shall be admissible as evidence, and may receive other evidence. If the court finds good cause to believe that the offender has violated the terms or conditions

INTRODUCED

HB1299

59 of his probation, it shall revoke some portion of the previously suspended sentence pursuant to
60 subsection D and may continue or modify any existing terms and conditions of probation. If the court
61 does not modify the terms and conditions of probation or remove the offender from the program, the
62 previously ordered terms and conditions of probation shall continue to apply. The court may remove the
63 offender from the immediate sanction probation program at any time.

64 D. 1. If the court finds good cause to believe that an offender subject to the immediate sanction
65 probation program has violated the terms of suspension, it shall impose the following applicable
66 sentence:

- 67 a. For the first violation, three to 10 days in jail;
- 68 b. For the second subsequent violation, 10 to 20 days in jail;
- 69 c. For the third subsequent violation, 20 to 30 days in jail; and
- 70 d. For the fourth subsequent violation, 30 to 90 days in jail.

71 2. No sentence set out in this subsection may be:

- 72 a. Suspended in whole or in part;
- 73 b. Reduced as a result of credits earned in accordance with § 53.1-187; or
- 74 c. Served on work release or home electronic monitoring as defined in §§ 53.1-131 and 53.1-131.2,
75 respectively.

76 E. After the defendant has served his sentence for a fourth subsequent violation set out in subdivision
77 D 1, the court may have the offender assessed by the probation and parole office for addiction to, or
78 dependence on, controlled substances. If the assessment indicates that the offender is addicted to, or
79 dependent on, a controlled substance or substances, the court shall provide the offender the option to
80 enter a drug treatment court program established in accordance with the provisions of § 18.2-254.1 if
81 such a program exists in the circuit or, if such a program is not available, another substance abuse
82 treatment program approved by the probation and parole district office.

83 F. Upon completion of a sentence for a fourth subsequent violation, an offender shall be removed
84 from the immediate sanction probation program, and for any subsequent violation of the conditions of
85 suspension, the court shall proceed in accordance with the provisions of § 19.2-306. No offender who
86 has completed a sentence for a fourth violation is eligible for the immediate sanction probation program
87 thereafter.

88 G. The Virginia Criminal Sentencing Commission may calculate the impact of a revocation of a
89 suspended sentence for a participant in an immediate sanction probation program differently than the
90 revocation of a sentence pursuant to § 19.2-306.

91 § 19.2-306. Revocation of suspension of sentence and probation.

92 A. In any case in which the court has suspended the execution or imposition of sentence, the court
93 may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any
94 time within the probation period, or within the period of suspension fixed by the court. If neither a
95 probation period nor a period of suspension was fixed by the court, then the court may revoke the
96 suspension for any cause the court deems sufficient that occurred within the maximum period for which
97 the defendant might originally have been sentenced to be imprisoned.

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

105 C. 1. If the court, after hearing, finds good cause to believe that the defendant has violated the terms
106 of suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall
107 revoke the suspension, and the court may pronounce whatever sentence might have been originally
108 imposed or (ii) if the court originally suspended the execution of the sentence, the court shall revoke the
109 suspension and the original sentence shall be in full force and effect. The court may again suspend all or
110 any part of this sentence and may place the defendant upon terms and conditions or probation.

111 2. In addition, the court, after hearing pursuant to subdivision 1, may place the offender, as a
112 condition of probation, in the immediate sanction probation program established in § 19.2-303.5 if the
113 offender has:

- 114 a. been convicted of a felony offense for which the sentence has been suspended in whole or in part;
- 115 b. been charged with violation of the conditions of probation supervision other than (i) absconding
116 for more than seven days or (ii) commitment of a new felony offense or misdemeanor for which a jail
117 sentence can be imposed; and
- 118 c. never been convicted of a violent felony offense, as defined in § 17.1-805.

119 D. If any court has, after hearing, found no cause to impose a sentence that might have been
120 originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a

121 sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which
122 the hearing was held, shall be barred.

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

126 2. *That the Virginia Criminal Sentencing Commission shall administer the pilot testing of the*
127 *provisions of this act in no more than five pilot site jurisdictions selected by the Commission.*

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HB1299