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HOUSE BILL NO. 392

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact § 53.1-151 of the Code of Virginia, relating to parole eligibility for certain inmates otherwise deemed ineligible.

Patron—Howell, A.T.

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:**1. That § 53.1-151 of the Code of Virginia is amended and reenacted as follows:**

§ 53.1-151. Eligibility for parole.

A. Except as herein otherwise provided, every person convicted of a felony and sentenced and committed by a court under the laws of this Commonwealth to the Department of Corrections, whether or not such person is physically received at a Department of Corrections facility, or as provided for in § 19.2-308.1:

1. For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment imposed, or after serving ~~twelve~~ 12 years of the term of imprisonment imposed if one-fourth of the term of imprisonment imposed is more than ~~twelve~~ 12 years;

2. For the second time, shall be eligible for parole after serving one-third of the term of imprisonment imposed, or after serving ~~thirteen~~ 13 years of the term of imprisonment imposed if one-third of the term of imprisonment imposed is more than ~~thirteen~~ 13 years;

3. For the third time, shall be eligible for parole after serving one-half of the term of imprisonment imposed, or after serving ~~fourteen~~ 14 years of the term of imprisonment imposed if one-half of the term of imprisonment imposed is more than ~~fourteen~~ 14 years;

4. For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the term of imprisonment imposed, or after serving ~~fifteen~~ 15 years of the term of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than ~~fifteen~~ 15 years.

For the purposes of subdivisions 2, 3 and 4 of ~~subsection A~~ and for the purposes of subsections B1 and B2, prior commitments shall include commitments to any correctional facility under the laws of any state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction, kidnapping, burglary, felonious assault or wounding, or manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, if such would be a felony if committed in the Commonwealth. Only prior commitments interrupted by a person's being at liberty, or resulting from the commission of a felony while in a correctional facility of the Commonwealth, of any other state or of the United States, shall be included in determining the number of times such person has been convicted, sentenced and committed for the purposes of subdivisions 2, 3 and 4 of ~~subsection A~~. "At liberty" as used herein shall include not only freedom without any legal restraints, but shall also include release pending trial, sentencing or appeal, or release on probation or parole or escape. In the case of terms of imprisonment to be served consecutively, the total time imposed shall constitute the term of the imprisonment; in the case of terms of imprisonment to be served concurrently, the longest term imposed shall be the term of imprisonment. In any case in which a parolee commits an offense while on parole, only the sentence imposed for such offense and not the sentence or sentences or any part thereof from which he was paroled shall constitute the term of imprisonment.

The Department of Corrections shall make all reasonable efforts to determine prior convictions and commitments of each inmate for the enumerated offenses.

B. Persons sentenced to die shall not be eligible for parole. Any person sentenced to life imprisonment who escapes from a correctional facility or from any person in charge of his custody shall not be eligible for parole.

B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape or (iii) robbery by the presenting of firearms or other deadly weapon, or any combination of the offenses specified in ~~subdivisions clause~~ (i), (ii) or (iii) when such offenses were not part of a common act, transaction or scheme shall not be eligible for parole. In the event of a determination by the Department of Corrections that an individual is not eligible for parole under this subsection, the Parole Board may in its discretion, review that determination, and make a determination for parole eligibility pursuant to regulations promulgated by it for that purpose. Any determination of the Parole Board of parole eligibility thereby

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59 shall supersede any prior determination of parole ineligibility by the Department of Corrections under
60 this subsection.

61 *The Parole Board shall consider a petition for reconsideration of ineligibility for parole in the case*
62 *of a person whose parole eligibility is determined under this subsection and who (a) was convicted only*
63 *of robbery, (b) did not injure or attempt to injure any person, (c) did not have assistance of counsel in*
64 *preparing a petition for review of ineligibility previously considered on the merits under this provision,*
65 *(d) has been continuously confined for at least 15 years, and (e) has a record of good conduct during*
66 *confinement. For purposes of application of this subsection only, the Parole Board, in its discretion,*
67 *may determine that multiple offenses constitute parts of a common scheme or plan if those offenses*
68 *occurred within a period of 12 weeks or less. The Parole Board shall promulgate regulations to*
69 *implement the provisions of this subsection.*

70 B2. Any person convicted of three separate felony offenses of manufacturing, selling, giving,
71 distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance,
72 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty
73 as defined in this section between each conviction, shall not be eligible for parole.

74 C. Any person sentenced to life imprisonment for the first time shall be eligible for parole after
75 serving ~~fifteen~~ 15 years, except that if such sentence was for a Class 1 felony violation or the first
76 degree murder of a child under the age of eight in violation of § 18.2-32, he shall be eligible for parole
77 after serving ~~twenty-five~~ 25 years, unless he is ineligible for parole pursuant to subsection B1 or B2.

78 D. A person who has been sentenced to two or more life sentences, except a person to whom the
79 provisions of subsection B1, B2, or E of this section are applicable, shall be eligible for parole after
80 serving ~~twenty~~ 20 years of imprisonment, except that if either such sentence, or both, was or were for a
81 Class 1 felony violation, and he is not otherwise ineligible for parole pursuant to subsection B1, B2, or
82 E of this section, he shall be eligible for parole only after serving ~~thirty~~ 30 years.

83 E. A person convicted of an offense and sentenced to life imprisonment after being paroled from a
84 previous life sentence shall not be eligible for parole.

85 E1. Any person who has been convicted of murder in the first degree, rape in violation of § 18.2-61,
86 forcible sodomy, animate or inanimate object sexual penetration or aggravated sexual battery and who
87 has been sentenced to a term of years shall, upon a first commitment to the Department of Corrections,
88 be eligible for parole after serving two-thirds of the term of imprisonment imposed or after serving
89 ~~fourteen~~ 14 years of the term of imprisonment imposed if two-thirds of the term of imprisonment
90 imposed is more than ~~fourteen~~ 14 years. If such person has been previously committed to the
91 Department of Corrections, such person shall be eligible for parole after serving three-fourths of the
92 term of imprisonment imposed or after serving ~~fifteen~~ 15 years of the terms of imprisonment imposed if
93 three-fourths of the term of imprisonment imposed is more than ~~fifteen~~ 15 years.

94 F. If the sentence of a person convicted of a felony and sentenced to the Department is partially
95 suspended, he shall be eligible for parole based on the portion of such sentence execution which was not
96 suspended.

97 G. The eligibility time for parole as specified in subsections A, C and D of this section may be
98 modified as provided in §§ 53.1-191, 53.1-197 and 53.1-198.

99 H. The time for eligibility for parole as specified in subsection D of this section shall apply only to
100 those criminal acts committed on or after July 1, 1976.

101 I. The provisions of subdivisions 2, 3 and 4 of subsection A shall apply only to persons committed
102 to the Department of Corrections on or after July 1, 1979, but such persons' convictions and
103 commitments shall include all felony convictions and commitments without regard to the date of such
104 convictions and commitments.