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SENATE BILL NO. 111

Offered January 11, 2012

Prefiled January 9, 2012

A BILL to amend and reenact §§ 19.2-304 and 19.2-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-303.6, relating to establishing Sanctions with Unified Rapid Enforcement (SURE).

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-304 and 19.2-306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-303.6 as follows:

§ 19.2-303.6. Sanctions with Unified Rapid Enforcement (SURE).

A. There is hereby created a sentencing program designated as Sanctions with Unified Rapid Enforcement (SURE) to be used by circuit courts for certain offenders who have violated terms of their probation but have not been charged with a new felony or a misdemeanor for which a jail sentence can be imposed. Before becoming applicable in all judicial circuits, SURE shall be implemented in a limited number of jurisdictions selected by the Virginia Criminal Sentencing Commission to be pilot sites for a period of two years. The Commission shall administer this pilot testing of SURE.

B. Defendants subject to SURE sanctions shall be limited to those who (i) have been convicted of felony offenses and whose sentences have been suspended by the court in accordance with § 19.2-303 and (ii) have never been convicted of a violent offense, as defined in § 17.1-805.

C. 1. When the court, under the provisions of § 19.2-306, is to consider the revocation of the suspended sentence of a defendant who meets the SURE criteria, before making a determination upon revocation, if it finds good cause to believe that the defendant has violated the terms of suspension, it shall provide the defendant the option of being subject to SURE sanctions.

2. If the court suspects the offender has an addiction to, or dependence on, a controlled substance or substances, it shall have the defendant assessed by the probation and parole office. If the assessment indicates that the defendant is addicted to, or dependent on, a controlled substance or substances, the court shall provide the defendant the option to enter the drug treatment court program, if such a program exists in the circuit. If the defendant declines to be subject to SURE sanctions or to enter the drug treatment court program, the court shall proceed in accordance with the provisions of § 19.2-306.

3. If a defendant agrees to be subject to SURE sanctions, the court shall proceed in accordance with the provisions of § 19.2-306, except that, if the court finds good cause to believe that the defendant has violated the terms of suspension, it may not revoke the suspension and impose all or part of the original sentence. It shall, instead, reimpose the suspended sentence subject to whatever conditions the court may impose, provided, however, that one of the conditions shall be that the defendant shall be subject to SURE sanctions.

4. Counsel may move the court that, for good cause shown, the defendant not be given the option of being subject to SURE sanctions.

D. If a probation officer has reasonable cause to believe that a person subject to SURE sanctions has violated a condition of his suspension, he shall, under the provisions of § 53.1-149, immediately arrest the defendant or cause him to be arrested. After being taken into custody, the defendant shall be brought before the court within 24 hours, except that if the defendant is taken into custody on a Friday or the day before an official holiday, he shall be brought before the court on the next business day.

E. 1. If the court finds good cause to believe that a defendant subject to SURE sanctions has violated the terms of suspension, it shall impose the following applicable sentence:

- a. For the first violation, 5 to 10 days in jail;
- b. For the second subsequent violation, 15 to 20 days in jail;
- c. For the third subsequent violation, 25 to 30 days in jail; and
- d. For the fourth subsequent violation, 90 days to 12 months in jail.

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

- a. Suspended in whole or in part; or
- b. Reduced as a result of credits earned in accordance with § 53.1-187.

F. A defendant who agrees to be subject to SURE sanctions shall be deemed to have waived his right to counsel upon entering the SURE program. If a defendant chooses to exercise his right to counsel, the time limits set out in subsection D shall not be applicable.

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59 *G. Before imposing the sentence for a fourth subsequent SURE violation set out in subdivision E 1,*  
60 *the court may have the defendant assessed by the probation and parole office for addiction to, or*  
61 *dependence on, controlled substances. If the assessment indicates that the defendant is addicted to, or*  
62 *dependent on, a controlled substance or substances, the court shall provide the defendant the option to*  
63 *enter a drug treatment court program, established in accordance with the provisions of § 18.2-254.1, if*  
64 *such a program exists in the circuit. If there is no drug treatment court program available or if the*  
65 *defendant declines to enter such program if available, the court shall impose sentence as provided in*  
66 *subdivision E 1.*

67 *H. Upon completion of a sentence for a fourth subsequent SURE violation, an offender shall be*  
68 *placed on regular probation supervision. For any subsequent violation of the conditions of suspension,*  
69 *the court shall proceed in accordance with the provisions of § 19.2-306. No defendant who has*  
70 *completed a sentence for a fourth SURE violation may be eligible for SURE sanctions for violations of*  
71 *the conditions of suspension imposed in connection with the suspended sentence for an offense.*

72 § 19.2-304. Increasing or decreasing probation period and modification of conditions.

73 The court may subsequently increase or decrease the probation period and, *except as provided in*  
74 *§ 19.2-303.6,* may revoke or modify any condition of probation, but only upon a hearing after  
75 reasonable notice to both the defendant and the attorney for the Commonwealth.

76 § 19.2-306. Revocation of suspension of sentence and probation.

77 A. ~~It~~ *Except as provided in § 19.2-303.6,* in any case in which the court has suspended the execution  
78 or imposition of sentence, the court may revoke the suspension of sentence for any cause the court  
79 deems sufficient that occurred at any time within the probation period, or within the period of  
80 suspension fixed by the court. If neither a probation period nor a period of suspension was fixed by the  
81 court, then the court may revoke the suspension for any cause the court deems sufficient that occurred  
82 within the maximum period for which the defendant might originally have been sentenced to be  
83 imprisoned.

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

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

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

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