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SENATE BILL NO. 808

Offered January 9, 2013

Prefiled December 20, 2012

A BILL to amend and reenact § 16.1-272 of the Code of Virginia, relating to juvenile offenders with certain sentences; proceeding for sentence modification.

Patron—Marsden

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-272 of the Code of Virginia is amended and reenacted as follows:****§ 16.1-272. Power of circuit court over juvenile offender.**

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge, the court shall fix the sentence without the intervention of a jury.

1. ~~If~~ Subject to subdivision 4, if a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case including, but not limited to, commitment under subdivision A 14 of § 16.1-278.8 or § 16.1-285.1.

2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

3. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.

4. If a person is convicted of a nonhomicide offense committed when the person was a juvenile for which the court imposes a sentence of more than 25 years, the person may, after reaching the age of 35 or after serving 20 years of the sentence, whichever occurs last, petition the court in which the conviction occurred for a modification of the sentence. A copy of the petition shall be served upon the attorney for the Commonwealth in the jurisdiction where the petitioner was convicted, who shall have the right to file a response within 30 days of receiving service, which response shall be served on the petitioner. The petitioner shall have the right to file a reply to the attorney for the Commonwealth's response within 15 days after receiving service of such response. A victim as defined in § 19.2-11.01 shall be notified of the filing of the petition and of the time and place of any hearing by the attorney for the Commonwealth if the victim has submitted a written request for notification and current contact information to the attorney for the Commonwealth. A victim shall be permitted to submit to the court evidence concerning the impact that modification of the sentence would have on the victim. A probation officer of the court shall submit a written evaluation of the petitioner to the court that shall include petitioner's institutional record; course of conduct; and academic, vocational, and emotional development while incarcerated. In reviewing the petition, the court shall evaluate whether changed circumstances, including a review of the factors discussed in the written evaluation, warrant a reduction in sentence. In the court's discretion, such evaluation may include a hearing, personal appearance of the petitioner, or both. Within 120 days after the filing of the petition, the court shall issue an order determining whether and to what extent to reduce the petitioner's sentence, including to time served. The court shall have no authority to increase a petitioner's sentence. Such order shall not be subject to appeal or otherwise reviewable by any party, except to review any noncompliance with the provisions of this subdivision. After becoming eligible to file a petition, a person may file a petition under this subdivision no more often than once every five years. The right of petition established by this subdivision shall extend to all persons who are incarcerated with a sentence of more than 25 years, on or after July 1, 2013, for a nonhomicide offense committed while a juvenile.

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59 B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile
60 court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation
61 officer.

62 C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under
63 the criminal law, in cases where the juvenile is convicted of a felony in violation of § 18.2-61, 18.2-63,
64 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or 18.2-370.1 or, where the victim is a
65 minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of
66 § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the
67 Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ 9.1-900 et seq.)
68 of Title 9.1.

69 D. A juvenile sentenced pursuant to clause (i) of subdivision A 1 shall be eligible to earn sentence
70 credits in the manner prescribed by § 53.1-202.2 for the portion of the sentence served as a serious
71 juvenile offender under § 16.1-285.1.

72 E. If the court sentences the juvenile as a juvenile under this chapter, the clerk shall provide a copy
73 of the court's final order or judgment to the court service unit in the same locality as the juvenile court
74 to which the case had been transferred.