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SENATE BILL NO. 809

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 30, 2013)

(Patron Prior to Substitute—Senator Marsden)

A BILL to amend and reenact §§ 18.2-10, 18.2-67.5:3, and 19.2-297.1 of the Code of Virginia, relating to punishment for certain juvenile offenders.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-10, 18.2-67.5:3, and 19.2-297.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-10. Punishment for conviction of felony; penalty.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under 18 years of age at the time of the offense ~~or~~, the offense shall be punishable as a Class 2 felony. If the person is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.

§ 18.2-67.5:3. Punishment upon conviction of certain subsequent violent felony sexual assault.

A. Any person convicted of more than one offense specified in subsection B, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, if the person convicted was 18 years of age or older at the time of the second or subsequent offense, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to convictions for:

1. Rape in violation of § 18.2-61;
2. Forcible sodomy in violation of § 18.2-67.1;
3. Object sexual penetration in violation of § 18.2-67.2;
4. Abduction with intent to defile in violation of § 18.2-48; or
5. Conspiracy to commit any offense listed in subdivisions 1 through 4 pursuant to § 18.2-22.

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under

60 the laws of any state or the United States that are substantially similar to those listed in subsection B
61 and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile
62 offense is substantially similar to those listed in subsection B, the offense would be a felony if
63 committed by an adult in the Commonwealth and the offense was committed less than twenty years
64 before the second offense.

65 The Commonwealth shall notify the defendant in the indictment, information, or warrant, at least
66 thirty days prior to trial, of its intention to seek punishment pursuant to this section.

67 **§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.**

68 A. Any person convicted of two or more separate acts of violence when such offenses were not part
69 of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between
70 each conviction, shall, upon conviction of a third or subsequent act of violence, *if the person convicted*
71 *was 18 years of age or older at the time of the third or subsequent act of violence*, be sentenced to life
72 imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or
73 found by the jury or judge before whom he is tried, that he has been previously convicted of two or
74 more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the
75 following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

- 76 a. First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.);
77 b. Mob-related felonies under Article 2 (§ 18.2-38 et seq.);
78 c. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.);
79 d. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.);
80 e. Robbery under § 18.2-58 and carjacking under § 18.2-58.1;
81 f. Except as otherwise provided in § 18.2-67.5:2 or § 18.2-67.5:3, criminal sexual assault punishable
82 as a felony under Article 7 (§ 18.2-61 et seq.); or
83 g. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony
84 violation of § 18.2-79.

85 (ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii)
86 violations as a principal in the second degree or accessory before the fact of the provisions enumerated
87 in clause (i) of this section.

88 B. Prior convictions shall include convictions under the laws of any state or of the United States for
89 any offense substantially similar to those listed under "act of violence" if such offense would be a
90 felony if committed in the Commonwealth.

91 The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its
92 intention to seek punishment pursuant to this section.

93 C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole
94 and shall not be eligible for any good conduct allowance or any earned sentence credits under Chapter 6
95 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section, other
96 than a person who was sentenced under subsection A of § 18.2-67.5:3 for criminal sexual assault
97 convictions specified in subdivision f, (i) who has reached the age of sixty-five or older and who has
98 served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and
99 who has served at least ten years of the sentence imposed may petition the Parole Board for conditional
100 release. The Parole Board shall promulgate regulations to implement the provisions of this subsection.