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SENATE BILL NO. 122

Offered January 8, 2014

Prefiled December 30, 2013

A BILL to amend and reenact §§ 18.2-10, 18.2-31, 18.2-67.5:3, and 19.2-297.1 of the Code of Virginia, relating to juvenile offenders; offenses and punishment.

Patron—Marsden

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-10, 18.2-31, 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.

§ 18.2-31. Capital murder defined; punishment.

The following offenses, *when committed by a person 18 years of age or older*, shall constitute capital murder, punishable as a Class 1 felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent

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59 to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration;

60 6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in
61 § 9.1-101, a fire marshal appointed pursuant to § 27-30 or a deputy or an assistant fire marshal
62 appointed pursuant to § 27-36, when such fire marshal or deputy or assistant fire marshal has police
63 powers as set forth in §§ 27-34.2 and 27-34.2:1, an auxiliary police officer appointed or provided for
64 pursuant to §§ 15.2-1731 and 15.2-1733, an auxiliary deputy sheriff appointed pursuant to § 15.2-1603,
65 or any law-enforcement officer of another state or the United States having the power to arrest for a
66 felony under the laws of such state or the United States, when such killing is for the purpose of
67 interfering with the performance of his official duties;

68 7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act
69 or transaction;

70 8. The willful, deliberate, and premeditated killing of more than one person within a three-year
71 period;

72 9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted
73 commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such
74 killing is for the purpose of furthering the commission or attempted commission of such violation;

75 10. The willful, deliberate, and premeditated killing of any person by another pursuant to the
76 direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection I
77 of § 18.2-248;

78 11. The willful, deliberate, and premeditated killing of a pregnant woman by one who knows that the
79 woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy
80 without a live birth;

81 12. The willful, deliberate, and premeditated killing of a person under the age of fourteen by a
82 person age twenty-one or older;

83 13. The willful, deliberate, and premeditated killing of any person by another in the commission of
84 or attempted commission of an act of terrorism as defined in § 18.2-46.4;

85 14. The willful, deliberate, and premeditated killing of a justice of the Supreme Court, a judge of the
86 Court of Appeals, a judge of a circuit court or district court, a retired judge sitting by designation or
87 under temporary recall, or a substitute judge appointed under § 16.1-69.9:1 when the killing is for the
88 purpose of interfering with his official duties as a judge; and

89 15. The willful, deliberate, and premeditated killing of any witness in a criminal case after a
90 subpoena has been issued for such witness by the court, the clerk, or an attorney, when the killing is for
91 the purpose of interfering with the person's duties in such case.

92 If any one or more subsections, sentences, or parts of this section shall be judged unconstitutional or
93 invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof but shall
94 be confined in its operation to the specific provisions so held unconstitutional or invalid.

95 **§ 18.2-67.5:3. Punishment upon conviction of certain subsequent violent felony sexual assault.**

96 A. Any person convicted of more than one offense specified in subsection B, when such offenses
97 were not part of a common act, transaction or scheme, and who has been at liberty as defined in
98 § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, *if*
99 *the person convicted was 18 years of age or older at the time of the second or subsequent offense*, be
100 sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided
101 it is admitted, or found by the jury or judge before whom he is tried, that he has been previously
102 convicted of at least one of the specified offenses.

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

104 1. Rape in violation of § 18.2-61;

105 2. Forcible sodomy in violation of § 18.2-67.1;

106 3. Object sexual penetration in violation of § 18.2-67.2;

107 4. Abduction with intent to defile in violation of § 18.2-48; or

108 5. Conspiracy to commit any offense listed in subdivisions 1 through 4 pursuant to § 18.2-22.

109 C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under
110 the laws of any state or the United States that are substantially similar to those listed in subsection B
111 and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile
112 offense is substantially similar to those listed in subsection B, the offense would be a felony if
113 committed by an adult in the Commonwealth and the offense was committed less than twenty years
114 before the second offense.

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

117 **§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.**

118 A. Any person convicted of two or more separate acts of violence when such offenses were not part
119 of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between
120 each conviction, shall, upon conviction of a third or subsequent act of violence, *if the person convicted*

was 18 years of age or older at the time of the third or subsequent act of violence, 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 two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

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

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

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

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

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