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HOUSE BILL NO. 1972

Offered January 14, 2015

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A BILL to amend and reenact §§ 17.1-803 and 19.2-299 of the Code of Virginia, relating to presentence reports; costs of alternative sanctions.

Patron—Preston

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 17.1-803 and 19.2-299 of the Code of Virginia are amended and reenacted as follows:****§ 17.1-803. Powers and duties.**

The Commission shall:

1. Develop, maintain and modify as may be deemed necessary, a proposed system of statewide discretionary sentencing guidelines for use in all felony cases which will take into account historical data, when available, concerning time actually served for various felony offenses committed prior to January 1, 1995, and sentences imposed for various felony offenses committed on or after January 1, 1995, and such other factors as may be deemed relevant to sentencing.

2. Prepare, periodically update, and distribute sentencing worksheets for the use of sentencing courts which, when used, will produce a recommended sentencing range for a felony offense in accordance with the discretionary sentencing guidelines established pursuant to subdivision 1.

3. Prepare, periodically update, and distribute a form for the use of sentencing courts which will assist such courts in recording the reason or reasons for any sentence imposed in a felony case which is greater or less than the sentence recommended by the discretionary sentencing guidelines.

4. Prepare guidelines for sentencing courts to use in determining appropriate candidates for alternative sanctions which may include, but not be limited to (i) fines and day fines, (ii) boot camp incarceration, (iii) local correctional facility incarceration, (iv) diversion center incarceration, (v) detention center incarceration, (vi) home incarceration/electronic monitoring, (vii) day or evening reporting, (viii) probation supervision, (ix) intensive probation supervision, and (x) performance of community service.

5. Develop an offender risk assessment instrument for use in all felony cases, based on a study of Virginia felons, that will be predictive of the relative risk that a felon will become a threat to public safety.

6. Apply the risk assessment instrument to offenders convicted of any felony that is not specified in (i) subdivision 1, 2 or 3 of subsection A of § 17.1-805 or (ii) subsection C of § 17.1-805 under the discretionary sentencing guidelines, and shall determine, on the basis of such assessment and with due regard for public safety needs, the feasibility of achieving the goal of placing 25 percent of such offenders in one of the alternative sanctions listed in subdivision 4. If the Commission so determines that achieving the 25 percent or a higher percentage goal is feasible, it shall incorporate such goal into the discretionary sentencing guidelines, to become effective on January 1, 1996. If the Commission so determines that achieving the goal is not feasible, the Commission shall report that determination to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia on or before December 1, 1995, and shall make such recommendations as it deems appropriate.

7. Monitor sentencing practices in felony cases throughout the Commonwealth, including the use of the discretionary sentencing guidelines *and the estimated operating cost of every sentence imposed by each circuit court judge*, and maintain a database containing the information obtained.

8. Monitor felony sentence lengths, crime trends, correctional facility population trends and correctional resources and make recommendations regarding projected correctional facilities capacity requirements and related correctional resource needs.

9. Study felony statutes in the context of judge-sentencing and jury-sentencing patterns as they evolve after January 1, 1995, and make recommendations for the revision of general criminal offense statutes to provide more specific offense definitions and more narrowly prescribed ranges of punishment.

10. Report upon its work and recommendations annually on or before December 1 to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia. Such report shall include any modifications to the discretionary sentencing guidelines adopted by the Commission pursuant to subdivision 1 and shall be accompanied by a statement of the reasons for those modifications.

11. Perform such other functions as may be otherwise required by law or as may be necessary to

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59 carry out the provisions of this chapter.

60 **§ 19.2-299. Investigations and reports by probation officers in certain cases.**

61 A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of
62 § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4,
63 attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of
64 § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the
65 attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a
66 felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement
67 between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea
68 agreement or is found guilty by the court after a plea of not guilty; or (iii) the court shall when a person
69 is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a
70 felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, clause (2) or (3) of § 18.2-49, § 18.2-61, 18.2-63,
71 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5, 18.2-67.5:1, 18.2-355,
72 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1, or 18.2-370.2, or any
73 attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or
74 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history
75 of the accused, including a report of the accused's criminal record as an adult and available juvenile
76 court records, any information regarding the accused's participation or membership in a criminal street
77 gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may
78 determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the
79 Commonwealth objects, the court may order that the report contain no more than the defendant's
80 criminal history, any history of substance abuse, any physical or health-related problems as may be
81 pertinent, and any applicable sentencing guideline worksheets. This expedited report shall be subject to
82 all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The
83 probation officer, after having furnished a copy of this report at least five days prior to sentencing to
84 counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his
85 report in advance of the sentencing hearing to the judge in chambers, who shall keep such report
86 confidential. Counsel for the accused may provide the accused with a copy of the presentence report.
87 The probation officer shall be available to testify from this report in open court in the presence of the
88 accused, who shall have been provided with a copy of the presentence report by his counsel or advised
89 of its contents and be given the right to cross-examine the investigating officer as to any matter
90 contained therein and to present any additional facts bearing upon the matter. The report of the
91 investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part
92 of the record in the case. Any report so filed shall be made available only by court order and shall be
93 sealed upon final order by the court, except that such reports or copies thereof shall be available at any
94 time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United
95 States; to any agency where the accused is referred for treatment by the court or by probation and
96 parole services; and to counsel for any person who has been indicted jointly for the same felony as the
97 person subject to the report. Subject to the limitations set forth in § 37.2-901, any report prepared
98 pursuant to the provisions hereof shall without court order be made available to counsel for the person
99 who is the subject of the report if that person (i) is charged with a felony subsequent to the time of the
100 preparation of the report or (ii) has been convicted of the crime or crimes for which the report was
101 prepared and is pursuing a post-conviction remedy. The presentence report shall be in a form prescribed
102 by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall
103 be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection,
104 information regarding the accused's participation or membership in a criminal street gang may include
105 the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and
106 types of crimes that are likely to be committed by that criminal street gang.

107 B. As a part of any presentence investigation conducted pursuant to subsection A when the offense
108 for which the defendant was convicted was a felony, the court probation officer shall advise any victim
109 of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be
110 given the opportunity to submit to the Board a written statement in advance of any parole hearing
111 describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii)
112 to receive copies of such other notifications pertaining to the defendant as the Board may provide
113 pursuant to subsection B of § 53.1-155.

114 C. As part of any presentence investigation conducted pursuant to subsection A when the offense for
115 which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.)
116 of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant
117 with illicit drug operations or markets.

118 D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense
119 for which the defendant was convicted was a felony, not a capital offense, committed on or after
120 January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to

121 § 18.2-251.01.

122 *E. As a part of any presentence investigation conducted pursuant to subsection A when the offense*
123 *for which the defendant was convicted was a felony, the presentence report shall include an estimate of*
124 *the operating costs associated with the imprisonment of the defendant in a state adult correctional*
125 *facility as well as any alternative sanctions available to the sentencing court, including those alternative*
126 *sanctions set forth in subdivision 4 of § 17.1-803.*

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