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SENATE BILL NO. 142

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 27, 2014)

(Patron Prior to Substitute—Senator Marsden)

A BILL to amend the Code of Virginia by adding a section numbered 19.2-305.5, relating to sentence modification procedure for certain juvenile offenders.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-305.5 as follows:

§ 19.2-305.5. Sentence modification for certain juvenile offenders.

A. A person who was convicted of a nonhomicide offense or multiple nonhomicide offenses arising out of the same act or transaction committed on or after January 1, 1995, and committed when the person was a juvenile, for which the court imposes a life sentence or consecutive active terms of confinement that would be completed after the offender's sixtieth birthday may, after his thirty-fifth birthday or after serving 20 years of his sentence, whichever occurs later, petition the Supreme Court for a modification of the sentence.

B. Upon receipt of the petition, the Chief Justice of the Supreme Court shall, if the petition is in order, appoint a four-judge panel of circuit court judges from four different judicial circuits, including one circuit court judge from the circuit court that sentenced the person, to conduct a hearing in the City of Richmond. The panel shall appoint counsel for the petitioner and petitioner's counsel shall be provided with a copy of the petition. 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.

C. 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 panel written evidence concerning the effect that modification of the sentence would have on the victim; at the discretion of the victim, the victim or a family member of the victim may appear at the hearing.

D. A probation officer of the court shall submit a written evaluation of the petitioner to the panel that shall include petitioner's institutional record; course of conduct; and academic, vocational, and emotional development while incarcerated. The panel shall hold a sentencing hearing and shall allow the personal appearance of the petitioner. In reviewing the petition, the panel shall evaluate whether a review of the factors discussed in the written evaluation, any relevant factors listed in subdivision A 4 of § 16.1-269.1, history of childhood trauma or contact with the child welfare system, remorsefulness, rehabilitation efforts, and the petitioner's growth and maturity while incarcerated, or any changed circumstances warrant a reduction in sentence. Within 120 days after the filing of the petition, the panel shall issue an order determining whether and to what extent to reduce or suspend the petitioner's sentence, including to time served, and shall include the reasons for the decision in the order. Any order to modify the sentence shall require three affirmative votes of the judges serving on the panel. The panel may place the petitioner on probation and set terms and conditions of probation, but 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 by the Court of Appeals to review any noncompliance with the provisions of this section or objections of constitutional error, and the decision of the Court of Appeals shall be final. Upon a finding by the Court of Appeals of noncompliance with this section or constitutional error, the case shall be remanded for a new proceeding by a different panel of judges. After becoming eligible to file a petition, a person may file a petition under this section no more often than once every five years.

E. The right of petition established by this section shall extend to all persons who meet the criteria of subsection A and are incarcerated on or after July 1, 2014.

SENATE SUBSTITUTE

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