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SENATE BILL NO. 94

Offered January 13, 2016

Prefiled December 22, 2015

A BILL to amend and reenact §§ 17.1-406 and 17.1-410 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-305.5, relating to sentence modification procedure for certain juvenile offenders.

Patrons—Marsden and Favola

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-406 and 17.1-410 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-305.5 as follows:

§ 17.1-406. Petitions for appeal; cases over which Court of Appeals does not have jurisdiction.

A. Any aggrieved party may present a petition for appeal to the Court of Appeals from (i) any final conviction in a circuit court of a traffic infraction or a crime, except where a sentence of death has been imposed, (ii) any final decision of a circuit court on an application for a concealed weapons permit pursuant to Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2, (iii) any final order of a circuit court involving involuntary treatment of prisoners pursuant to § 53.1-40.1, or (iv) any final order for declaratory or injunctive relief under § 57-2.02, or (v) any final order of a panel on a petition for a sentence modification pursuant to § 19.2-305.5. The Commonwealth or any county, city or town may petition the Court of Appeals for an appeal pursuant to this subsection in any case in which such party previously could have petitioned the Supreme Court for a writ of error under § 19.2-317. The Commonwealth may also petition the Court of Appeals for an appeal in a criminal case pursuant to § 19.2-398.

B. In accordance with other applicable provisions of law, appeals lie directly to the Supreme Court from a conviction in which a sentence of death is imposed, from a final decision, judgment or order of a circuit court involving a petition for a writ of habeas corpus, from any final finding, decision, order, or judgment of the State Corporation Commission, and from proceedings under §§ 54.1-3935 and 54.1-3937. Complaints of the Judicial Inquiry and Review Commission shall be filed with the Supreme Court of Virginia. The Court of Appeals shall not have jurisdiction over any cases or proceedings described in this subsection.

§ 17.1-410. Disposition of appeals; finality of decisions.

A. Each appeal of right taken to the Court of Appeals and each appeal for which a petition for appeal has been granted shall be considered by a panel of the court.

When the Court of Appeals has (i) rejected a petition for appeal, (ii) dismissed an appeal in any case in accordance with the Rules of Court, or (iii) decided an appeal, its decision shall be final, without appeal to the Supreme Court, in:

1. Traffic infraction and misdemeanor cases where no incarceration is imposed;
2. Cases originating before any administrative agency or the Virginia Workers' Compensation Commission;
3. Cases involving the affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2;
4. Appeals in criminal cases pursuant to §§ 19.2-398 and 19.2-401. Such finality of the Court of Appeals' decision shall not preclude a defendant, if he is convicted, from requesting the Court of Appeals or Supreme Court on direct appeal to reconsider an issue which was the subject of the pretrial appeal; and

5. Appeals involving involuntary treatment of prisoners pursuant to § 53.1-40.1.

B. Notwithstanding the provisions of subsection A, in any case other than an appeal pursuant to § 19.2-305.5 or 19.2-398, in which the Supreme Court determines on a petition for review that the decision of the Court of Appeals involves a substantial constitutional question as a determinative issue or matters of significant precedential value, review may be had in the Supreme Court in accordance with the provisions of § 17.1-411.

§ 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

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59 confinement that would be completed after the offender's sixtieth birthday may, after his thirty-fifth
60 birthday or after serving 20 years of his sentence, whichever occurs later, petition the Supreme Court
61 for a modification of the sentence.

62 B. Upon receipt of the petition, the Chief Justice of the Supreme Court shall, if the petition is in
63 order, appoint a four-judge panel of circuit court judges from four different judicial circuits, including a
64 judge from the judicial circuit of the court that sentenced the person, to conduct a hearing in the City of
65 Richmond. The panel shall appoint counsel for the petitioner and petitioner's counsel shall be provided
66 with a copy of the petition. A copy of the petition shall be served upon the attorney for the
67 Commonwealth in the jurisdiction where the petitioner was convicted, who shall have the right to file a
68 response within 30 days of receiving service, which response shall be served on the petitioner. The
69 petitioner shall have the right to file a reply to the attorney for the Commonwealth's response within 15
70 days after receiving service of such response.

71 C. A victim as defined in § 19.2-11.01 shall be notified of the filing of the petition and of the time
72 and place of any hearing by the attorney for the Commonwealth if the victim has submitted a written
73 request for notification and current contact information to the attorney for the Commonwealth. A victim
74 shall be permitted to submit to the panel written evidence concerning the effect that the crime had on
75 the victim and the effect that modification of the sentence would have on the victim; at the discretion of
76 the victim, the victim or a family member of the victim may appear at the hearing.

77 D. A probation officer of the court that sentenced the person shall submit a written evaluation of the
78 petitioner to the panel that shall include the petitioner's institutional record, course of conduct, and
79 academic, vocational, and emotional development while incarcerated. The panel shall hold a sentencing
80 hearing and shall allow the personal appearance of the petitioner. In determining whether to grant
81 relief pursuant to the petition, the panel shall review the petitioner's institutional record, course of
82 conduct, academic, vocational, and emotional development while incarcerated, any other material
83 included in the written evaluation, any relevant factors listed in subdivision A 4 of § 16.1-269.1, any
84 history of childhood trauma or contact with the child welfare system, the petitioner's remorsefulness,
85 rehabilitation efforts, and growth and maturity while incarcerated, or any changed circumstances and
86 determine whether a reduction in sentence is warranted. Within 45 days after the hearing, the panel
87 shall issue an order determining whether and to what extent to reduce or suspend the petitioner's
88 sentence, including to time served, and shall include the reasons for the decision in the order. Any order
89 to modify the sentence shall require three affirmative votes of the judges serving on the panel. The panel
90 may place the petitioner on probation and set terms and conditions of probation but shall have no
91 authority to increase a petitioner's sentence. Such order shall not be subject to appeal except that the
92 petitioner may petition for appeal to the Court of Appeals to review any claims of noncompliance with
93 the provisions of this section or constitutional error, and no further appeal shall lie from the decision of
94 the Court of Appeals. Upon a finding by the Court of Appeals of noncompliance with this section or
95 constitutional error, the case shall be remanded back to the panel for such further proceedings as may
96 be appropriate. After becoming eligible to file a petition, a person may file a petition under this section
97 no more often than once every five years.