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HOUSE BILL NO. 2039

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact § 19.2-298.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 17.1-805.1, relating to discretionary sentencing guideline midpoints; possession of child pornography.

Patron—Miller

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-298.01 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 17.1-805.1 as follows:

§ 17.1-805.1. Discretionary sentencing guideline midpoints; possession of child pornography.

The midpoint of the recommended sentencing range for possession of child pornography in violation of § 18.2-374.1:1 adopted by the Commission shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense; (ii) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years; or (iii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of 40 years or more. The discretionary sentencing guidelines for any violation of § 18.2-374.1:1 shall be calculated on Section C of the Other Sexual Assault/Obcenity worksheet adopted by the Commission.

§ 19.2-298.01. Use of discretionary sentencing guidelines.

A. In all felony cases, other than Class 1 felonies, the court shall (i) have presented to it the appropriate discretionary sentencing guidelines worksheets and (ii) review and consider the suitability of the applicable discretionary sentencing guidelines established pursuant to Chapter 8 (§ 17.1-800 et seq.) of Title 17.1. Before imposing sentence, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection. In cases tried by a jury, the jury shall not be presented any information regarding sentencing guidelines.

B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence ~~which~~ that is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure. *In any felony case for possession of child pornography in violation of § 18.2-374.1:1 in which the court imposes a sentence that is less than the midpoint of the discretionary sentencing guidelines, the court shall review all child pornography as defined in § 18.2-374.1 possessed by the defendant, including any child pornography possessed by the defendant for which he was not charged or convicted, and shall file with the record of the case a written statement that such review was conducted.*

C. In felony cases, other than Class 1 felonies, tried by a jury and in felony cases tried by the court without a jury upon a plea of not guilty, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets. In felony cases tried upon a plea of guilty, including cases which are the subject of a plea agreement, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the accused, the court and the attorney for the Commonwealth, the worksheets shall be prepared by the attorney for the Commonwealth.

D. Except as provided in subsection E, discretionary sentencing guidelines worksheets prepared pursuant to this section shall be subject to the same distribution as presentence investigation reports prepared pursuant to subsection A of § 19.2-299.

E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days. Similarly, the statement required by §§ 19.2-295 and 19.2-303 and regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the Virginia Criminal Sentencing Commission.

F. The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis of any other post-conviction relief.

INTRODUCED

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59 G. The provisions of this section shall apply only to felony cases in which the offense is committed
60 on or after January 1, 1995, and for which there are discretionary sentencing guidelines. For purposes of
61 the discretionary sentencing guidelines only, a person sentenced to a boot camp incarceration program
62 pursuant to § 19.2-316.1, a detention center incarceration program pursuant to § 19.2-316.2, or a
63 diversion center incarceration program pursuant to § 19.2-316.3 shall be deemed to be sentenced to a
64 term of incarceration.

65 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
66 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
67 **\$989,660 for periods of imprisonment in state adult correctional facilities and cannot be**
68 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**