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## HOUSE BILL NO. 1055

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 5, 2018)

(Patron Prior to Substitute—Delegate Herring)

A BILL to amend and reenact §§ 17.1-100 and 19.2-298.01 of the Code of Virginia, relating to discretionary sentencing guidelines; written explanation.

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 17.1-100 and 19.2-298.01 of the Code of Virginia are amended and reenacted as follows:

**§ 17.1-100. Judicial performance evaluation program.**

A. The Supreme Court, by rule, shall establish and maintain a judicial performance evaluation program that will provide a self-improvement mechanism for judges and a source of information for the reelection process. By December 1 of each year, the Supreme Court, or its designee, shall transmit a report of the evaluation in the final year of the term of each justice and judge whose term expires during the next session of the General Assembly to the Chairmen of the House and Senate Committees for Courts of Justice. *Such report shall include the number of cases during the period of the evaluation in which a judge imposed a sentence that is either greater or less than that indicated by the sentencing guidelines and did not file a written explanation of such departure required pursuant to subsection B of § 19.2-298.01.*

B. The reporting requirement of this section shall become effective when funds are appropriated for this program and shall apply to the evaluation of any justice or judge who has had at least one interim evaluation conducted during his term. For any judge or justice elected or reelected on or after January 1, 2014, an interim evaluation of each individual justice or judge shall be completed during his term. Such interim evaluation shall be commenced by the judicial performance evaluation program no later than the midpoint of his term.

C. All records created or maintained by or on behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge are confidential and shall not be disclosed, except that any report provided to the General Assembly pursuant to this section shall be a public record that is open to inspection.

**§ 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 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.

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

60 of any other post-conviction relief; *however, if the court fails to file a written explanation pursuant to*  
61 *subsection B, the person sentenced may petition for a writ of mandamus in accordance with the*  
62 *provisions of Article 2 (§ 8.01-644 et seq.) of Chapter 25 of Title 8.01 to enforce the provisions of*  
63 *subsection B.*

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