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SENATE BILL NO. 1081

Offered January 9, 2019

Prefiled December 14, 2018

A BILL to amend and reenact §§ 16.1-272 and 53.1-40.01 of the Code of Virginia, relating to juvenile sentencing factors; geriatric release of juvenile offenders.

Patrons—Marsden; Delegate: Kory

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-272 and 53.1-40.01 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-272. Power of circuit court over juvenile offender.

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge, the court shall fix the sentence without the intervention of a jury. Nothing in this subsection shall be construed to require a court to review the results of an investigation completed pursuant to § 16.1-273.

1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case, including, but not limited to, commitment under subdivision A 14 of § 16.1-278.8 or § 16.1-285.1.

2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of ~~this~~ the Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § 16.1-285.1, or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

3. *If the juvenile is convicted of a felony, the court may consider a juvenile's diminished culpability and heightened capacity for change in determining the particular sentence to be imposed under subdivision 1 or 2.*

4. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer.

C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

D. A juvenile sentenced pursuant to clause (i) of subdivision A 1 shall be eligible to earn sentence credits in the manner prescribed by § 53.1-202.2 for the portion of the sentence served as a serious juvenile offender under § 16.1-285.1.

E. If the court sentences the juvenile as a juvenile under this chapter, the clerk shall provide a copy of the court's final order or judgment to the court service unit in the same locality as the juvenile court to which the case had been transferred.

§ 53.1-40.01. Conditional release of geriatric prisoners.

Any person serving a sentence imposed upon a conviction for a felony offense, other than a Class 1 felony, (i) who has reached the age of ~~sixty-five~~ 65 or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of ~~sixty~~ 60 or older and who has served at least ~~ten~~ 10 years of the sentence imposed may petition the Parole Board for conditional release. *For any*

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59 *such petitioner serving a sentence imposed for a conviction of an offense committed as a juvenile that*
60 *would be a crime if committed by an adult, the Parole Board may consider the petitioner's demonstrated*
61 *maturity and rehabilitation and the lesser culpability of juvenile offenders. The Parole Board shall*
62 promulgate regulations to implement the provisions of this section.