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SENATE BILL NO. 1437

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 19.2-299 and 53.1-165.1 of the Code of Virginia, relating to parole; exception to limitation on the application of parole statutes; investigations and reports by probation officers.

Patrons—McClellan; Delegates: Hope and Toscano

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-299 and 53.1-165.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall, unless waived by the defendant and the attorney for the Commonwealth, when the defendant pleads guilty or nolo contendere without a plea agreement or is found guilty by the court after a plea of not guilty or nolo contendere; or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, clause (2) or (3) of § 18.2-49, § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1, or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, any information regarding the accused's participation or membership in a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, and any applicable sentencing guideline worksheets. This expedited report shall be subject to all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been provided with a copy of the presentence report by his counsel or advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Subject to the limitations set forth in § 37.2-901, any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person (a) is charged with a felony subsequent to the time of the preparation of the report or (b) has been convicted of the crime or crimes for which the report was prepared and is pursuing a post-conviction remedy. Such report shall be made available for review without a court order to incarcerated persons who are eligible for release by the Virginia Parole Board, or such person's counsel, pursuant to regulations promulgated by the Virginia Parole Board for that purpose. The presentence report shall be in a form prescribed by the Department of Corrections. In all

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59 cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the
60 Department of Corrections. For the purposes of this subsection, information regarding the accused's
61 participation or membership in a criminal street gang may include the characteristics, specific rivalries,
62 common practices, social customs and behavior, terminology, and types of crimes that are likely to be
63 committed by that criminal street gang.

64 B. As a part of any presentence investigation conducted pursuant to subsection A when the offense
65 for which the defendant was convicted was a felony, the court probation officer shall advise any victim
66 of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be
67 given the opportunity to submit to the Board a written statement in advance of any parole hearing
68 describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii)
69 to receive copies of such other notifications pertaining to the defendant as the Board may provide
70 pursuant to subsection B of § 53.1-155.

71 C. As part of any presentence investigation conducted pursuant to subsection A when the offense for
72 which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.)
73 of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant
74 with illicit drug operations or markets.

75 D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense
76 for which the defendant was convicted was a felony, not a capital offense, committed on or after
77 January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to
78 § 18.2-251.01.

79 **§ 53.1-165.1. Limitation on the application of parole statutes.**

80 A. The provisions of this article, except §§ 53.1-160 and 53.1-160.1, shall not apply to any sentence
81 imposed or to any prisoner incarcerated upon a conviction for a felony offense committed on or after
82 January 1, 1995. Any person sentenced to a term of incarceration for a felony offense committed on or
83 after January 1, 1995, shall not be eligible for parole upon that offense.

84 *B. The provisions of this article shall apply to any person who was sentenced by a jury prior to June*
85 *9, 2000, for a noncapital felony offense committed on or after January 1, 1995, where the jury was not*
86 *instructed on the abolition of parole, and who remained incarcerated for such offense on July 1, 2019.*

87 *C. The Parole Board shall establish procedures for consideration of parole of persons entitled under*
88 *subsection B consistent with the provisions of § 53.1-154 allowing for extension of time for reasonable*
89 *cause.*