

20100176D

SENATE BILL NO. 438

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 17.1-100 and 17.1-803 of the Code of Virginia, relating to judicial performance evaluation; risk assessment tool; use of alternative sanction.*

Patron—Surovell

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-100 and 17.1-803 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-100. Judicial performance evaluation program; report.

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 (i) the number of cases during the judge's term 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 and (ii) *the number of cases during a judge's term in which an offender is a candidate for an alternative sanction as determined by the offender risk assessment tool and in which a judge received a recommendation to impose an alternative sanction and did not impose an alternative sanction.* The Virginia Criminal Sentencing Commission shall provide such information to the Supreme Court by November 1.

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.

§ 17.1-803. Powers and duties; report.

The Commission shall:

1. Develop, maintain, and modify as may be deemed necessary, a proposed system of statewide discretionary sentencing guidelines for use in all felony cases which will take into account historical data, when available, concerning time actually served for various felony offenses committed prior to January 1, 1995, and sentences imposed for various felony offenses committed on or after January 1, 1995, and such other factors as may be deemed relevant to sentencing.

2. Prepare, periodically update, and distribute sentencing worksheets for the use of sentencing courts which, when used, will produce a recommended sentencing range for a felony offense in accordance with the discretionary sentencing guidelines established pursuant to subdivision 1. *The sentencing courts shall use the recommended sentencing range to determine the cost of incarceration for an offender who is sentenced to the minimum recommended sentence. These costs shall be included on the sentencing guideline form for each offender who qualifies for a risk assessment and receives a recommendation of an alternative sanction based on such assessment.*

3. Prepare, periodically update, and distribute a form for the use of sentencing courts which will assist such courts in recording the reason or reasons for any sentence imposed in a felony case which is greater or less than the sentence recommended by the discretionary sentencing guidelines.

4. Prepare guidelines for sentencing courts to use in determining appropriate candidates for alternative sanctions which may include, but not be limited to (i) fines and day fines, (ii) boot camp incarceration, (iii) local correctional facility incarceration, (iv) diversion center incarceration, (v) detention center incarceration, (vi) home incarceration/electronic monitoring, (vii) day or evening reporting, (viii) probation supervision, (ix) intensive probation supervision, and (x) performance of community service.

INTRODUCED

SB438

59 5. Develop an offender risk assessment instrument for use in all felony cases, based on a study of
60 Virginia felons, that will be predictive of the relative risk that a felon will become a threat to public
61 safety.

62 6. Apply the risk assessment instrument to offenders convicted of any felony that is not specified in
63 (i) subdivision A 1, 2 or 3 of ~~subsection A~~ of § 17.1-805 or (ii) subsection C of § 17.1-805 under the
64 discretionary sentencing guidelines, and shall determine, on the basis of such assessment and with due
65 regard for public safety needs, the feasibility of achieving the goal of placing 25 percent of such
66 offenders in one of the alternative sanctions listed in subdivision 4. If the Commission so determines
67 that achieving the 25 percent or a higher percentage goal is feasible, it shall incorporate such goal into
68 the discretionary sentencing guidelines, to become effective on January 1, 1996. If the Commission so
69 determines that achieving the goal is not feasible, the Commission shall report that determination to the
70 General Assembly, the Governor, and the Chief Justice of the Supreme Court of Virginia on or before
71 December 1, 1995, and shall make such recommendations as it deems appropriate.

72 *7. Determine the number of offenders during a judge's term who qualify for the use of the offender*
73 *risk assessment tool and, on the basis of such assessment, are recommended to receive an alternative*
74 *sanction and do not receive an alternative sanction. The Commission shall determine the total costs of*
75 *imposing a sentence on each offender who, following the application of the risk assessment tool, is*
76 *recommended to receive an alternative sanction but does not receive an alternative sanction during a*
77 *judge's term. Such total costs during a judge's term shall be included in the judge's judicial performance*
78 *evaluation.*

79 8. Monitor sentencing practices in felony cases throughout the Commonwealth, including the use of
80 the discretionary sentencing guidelines, and maintain a database containing the information obtained.

81 ~~8.~~ 9. Monitor felony sentence lengths, crime trends, correctional facility population trends, and
82 correctional resources and make recommendations regarding projected correctional facilities capacity
83 requirements and related correctional resource needs.

84 ~~9.~~ 10. Study felony statutes in the context of judge-sentencing and jury-sentencing patterns as they
85 evolve after January 1, 1995, and make recommendations for the revision of general criminal offense
86 statutes to provide more specific offense definitions and more narrowly prescribed ranges of punishment.

87 ~~10.~~ 11. Report upon its work and recommendations annually on or before December 1 to the General
88 Assembly, the Governor, and the Chief Justice of the Supreme Court of Virginia. Such report shall
89 include any modifications to the discretionary sentencing guidelines adopted by the Commission
90 pursuant to subdivision 1 and shall be accompanied by a statement of the reasons for those
91 modifications.

92 ~~11.~~ 12. Perform such other functions as may be otherwise required by law or as may be necessary to
93 carry out the provisions of this chapter.