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**HOUSE BILL NO. 1806**

Offered January 13, 2021

Prefiled January 5, 2021

*A BILL to amend and reenact § 19.2-303 of the Code of Virginia, relating to suspension or modification of sentence; transfer to the Department of Corrections.*

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Patron—Kilgore

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 19.2-303 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.**

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of any offense for which a report to the Central Criminal Records Exchange is required in accordance with subsection A of § 19.2-390, shall determine whether a copy of the defendant's fingerprints or fingerprint identification information has been provided by a law-enforcement officer to the clerk of court for each such offense. In any case where fingerprints or fingerprint identification information has not been provided by a law-enforcement officer to the clerk of court, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition of probation or of the suspension of the imposition or execution of any sentence for such offense. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a

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59 postrelease supervision program operated by the Department of Corrections, and for at least three years  
60 of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS  
61 (Global Positioning System) tracking device, or other similar device.

62 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any  
63 time before the sentence has been completely served, suspend the unserved portion of any such sentence,  
64 place the person on probation for such time as the court shall determine, or otherwise modify the  
65 sentence imposed.

66 If a person has been sentenced for a felony to the Department of Corrections (*the Department*) but  
67 has not actually been transferred to a receiving unit of the Department, the court ~~which~~ *that* heard the  
68 case, if it appears compatible with the public interest and there are circumstances in mitigation of the  
69 offense, may, at any time before the person is transferred to the Department, suspend or otherwise  
70 modify the unserved portion of such a sentence. The court may place the person on probation for such  
71 time as the court shall determine. *If a motion to suspend or otherwise modify a person's sentence*  
72 *pursuant to this section is filed with the court that heard the case at any time before the person is*  
73 *transferred to the Department, the court may enter an order to retain jurisdiction over the matter for up*  
74 *to 60 days in order to consider and rule on such motion. If the court enters such order, the transfer of*  
75 *the person to the Department shall not affect the jurisdiction of the court under the terms of the order.*  
76 *Upon entry of an order to retain jurisdiction, the clerk of the court shall forthwith forward an attested*  
77 *copy of the order to the Department.*