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HOUSE BILL NO. 2038

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact §§ 19.2-303, 19.2-303.1, and 19.2-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-306.1, relating to probation, revocation, and suspension of sentence; limitations.

Patrons—Scott, Adams, D.M., Aird, Askew, Ayala, Bagby, Bourne, Bulova, Carr, Carter, Cole, J.G., Convirs-Fowler, Delaney, Filler-Corn, Gooditis, Guy, Guzman, Hayes, Helmer, Heretick, Herring, Hope, Hudson, Hurst, Jenkins, Jones, Keam, Kory, Krizek, Levine, Lopez, McQuinn, Mugler, Mullin, Mundon King, Murphy, Plum, Price, Rasoul, Reid, Roem, Samirah, Sickles, Simon, Simonds, Subramanyam, Sullivan, Torian, Tran, Tyler, VanValkenburg, Ward, Watts, Willett and Williams Graves; Senators: Barker, Bell, Boysko, Deeds, Ebbin, Edwards, Favola, Hashmi, Howell, Lewis, Locke, Lucas, Marsden, Mason, McClellan, McPike, Morrissey, Petersen, Saslaw, Spruill and Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-303, 19.2-303.1, and 19.2-306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-306.1 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.

INTRODUCED

HB2038

52 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,
53 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
54 the sentence is suspended, the judge shall order that the period of suspension shall be for a length of
55 time at least equal to the statutory maximum period for which the defendant might originally have been
56 sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension
57 subject to revocation by the court. The conditions of probation may include such conditions as the court
58 shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of
59 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
60 shall order that at least three years of the probation include active supervision of the defendant under a
61 postrelease supervision program operated by the Department of Corrections, and for at least three years
62 of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS
63 (Global Positioning System) tracking device, or other similar device.

64 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any
65 time before the sentence has been completely served, suspend the unserved portion of any such sentence,
66 place the person on probation for ~~such time as the court shall determine~~ *not more than the maximum*
67 *period for which the defendant might have been sentenced, or not more than five years, whichever is*
68 *less*, or otherwise modify the sentence imposed.

69 If a person has been sentenced for a felony to the Department of Corrections but has not actually
70 been transferred to a receiving unit of the Department, the court which heard the case, if it appears
71 compatible with the public interest and there are circumstances in mitigation of the offense, may, at any
72 time before the person is transferred to the Department, suspend or otherwise modify the unserved
73 portion of such a sentence. The court may place the person on probation for such time as the court shall
74 determine.

75 **§ 19.2-303.1. Fixing period of suspension of sentence.**

76 In any case where a court suspends the imposition or execution of a sentence, it may fix the period
77 of suspension for a ~~reasonable time, having due regard to the gravity of the offense, without regard to~~
78 ~~the maximum period for which the defendant might have been sentenced~~ *not more than the maximum*
79 *period for which the defendant might have been sentenced.*

80 **§ 19.2-306. Revocation of suspension of sentence and probation.**

81 A. In any case in which the court has suspended the execution or imposition of sentence, the court
82 may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any
83 time within the probation period, or within the period of suspension fixed by the court. If neither a
84 probation period nor a period of suspension was fixed by the court, then the court may revoke the
85 suspension for any cause the court deems sufficient that occurred within the maximum period for which
86 the defendant might originally have been sentenced to be imprisoned.

87 B. The court may not conduct a hearing to revoke the suspension of sentence unless the court issues
88 process to notify the accused or to compel his appearance before the court within one year after the
89 expiration of the period of probation or the period of suspension or, in the case of a failure to pay
90 restitution, within three years after such expiration. If neither a probation period nor a period of
91 suspension was fixed by the court, then the court shall issue process within one year after the expiration
92 of the maximum period for which the defendant might originally have been sentenced to be incarcerated.
93 Such notice and service of process may be waived by the defendant, in which case the court may
94 proceed to determine whether the defendant has violated the conditions of suspension.

95 C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of
96 suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke
97 the suspension, and the court may pronounce whatever sentence might have been originally imposed or
98 (ii) if the court originally suspended the execution of the sentence, the court shall revoke the suspension
99 and the original sentence shall be in full force and effect. The court may again suspend all or any part
100 of this sentence *for a period not to exceed the maximum period for which the defendant might have*
101 *been sentenced less any time already served* and may place the defendant upon terms and conditions or
102 probation. *The court shall measure the period of any suspension of sentence from the date of the entry*
103 *of the original judgment order.*

104 D. If any court has, after hearing, found no cause to impose a sentence that might have been
105 originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a
106 sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which
107 the hearing was held, shall be barred.

108 E. Nothing contained herein shall be construed to deprive any person of his right to appeal in the
109 manner provided by law to the circuit court having criminal jurisdiction from a judgment or order
110 revoking any suspended sentence.

111 **§ 19.2-306.1. Limitation on sentence upon revocation of suspension of sentence; exceptions.**

112 A. *The court shall not impose a sentence of a term of incarceration upon revocation of a suspended*
113 *sentence unless it finds the defendant has been convicted of another crime.*

114 B. Notwithstanding the provisions of subsection A, if the court finds, by a preponderance of the
115 evidence, that the defendant committed a technical violation that (i) was sexual in nature; (ii) involved
116 assaultive behavior or included a credible threat to cause bodily injury to another; (iii) involved
117 possession or control of a weapon; (iv) involved an intentional failure to adhere to recommended
118 programming or conditions on more than three occasions, and the defendant cannot be safely diverted
119 from total confinement through less restrictive means; or (v) there exists an identifiable threat to public
120 safety, and the defendant cannot be safely diverted from total confinement through less restrictive
121 means, the court may impose a determinate sentence of total confinement. The provisions of this
122 subsection shall not apply to a first technical violation.

123 C. If the court imposes a sentence of a term of incarceration upon revocation of a suspended
124 sentence for a condition under subsection B, the court may impose a sentence of no more than (i) 14
125 days for a second violation or (ii) 30 days for a third or subsequent violation. For a third or subsequent
126 technical violation, the court may impose any sentencing alternatives that were available at the time of
127 initial sentencing. However, for a sentence of a term of incarceration upon revocation of a suspended
128 sentence for a technical violation that (a) was sexual in nature, (b) involved assaultive behavior or
129 included a credible threat to cause bodily injury to another, (c) involved possession or control of a
130 weapon, or (d) involved an intentional failure to adhere to recommended programming or conditions on
131 more than three occasions, the court may add not more than 30 additional days for a second technical
132 violation, or not more than 45 days for a third or subsequent technical violation. The court shall
133 consider allowing the term of incarceration to be served on evenings or weekends for employed
134 probationers who have committed a second technical violation.

135 E. The time limitations in this section shall not apply to the extent that an additional term of
136 incarceration is necessary to allow a defendant to be evaluated for or to participate in a court-ordered
137 drug, alcohol, or mental health treatment program.