

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 19.2-303, 19.2-303.1, and 19.2-306 of the Code of Virginia and to*  
3 *amend the Code of Virginia by adding a section numbered 19.2-306.1, relating to probation,*  
4 *revocation, and suspension of sentence; limitations.*

5 [H 2038]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

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

10 **§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood,**  
11 **saliva, or tissue sample as condition of probation.**

12 After conviction, whether with or without jury, the court may suspend imposition of sentence or  
13 suspend the sentence in whole or part and in addition may place the defendant on probation under such  
14 conditions as the court shall determine, including monitoring by a GPS (Global Positioning System)  
15 tracking device, or other similar device, or may, as a condition of a suspended sentence, require the  
16 defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused  
17 by the offense for which convicted, or to perform community service, or both, under terms and  
18 conditions which shall be entered in writing by the court. *The court may fix the period of probation for*  
19 *up to the statutory maximum period for which the defendant might originally have been sentenced to be*  
20 *imprisoned. Any period of supervised probation shall not exceed five years from the release of the*  
21 *defendant from any active period of incarceration. The limitation on the period of probation shall not*  
22 *apply to the extent that an additional period of probation is necessary for the defendant to participate in*  
23 *a court-ordered program.* The defendant may be ordered by the court to pay the cost of the GPS  
24 tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed  
25 by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or  
26 modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01.  
27 The judge, after convicting the defendant of any offense for which a report to the Central Criminal  
28 Records Exchange is required in accordance with subsection A of § 19.2-390, shall determine whether a  
29 copy of the defendant's fingerprints or fingerprint identification information has been provided by a  
30 law-enforcement officer to the clerk of court for each such offense. In any case where fingerprints or  
31 fingerprint identification information has not been provided by a law-enforcement officer to the clerk of  
32 court, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as  
33 a condition of probation or of the suspension of the imposition or execution of any sentence for such  
34 offense. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the  
35 provisions of subsection D of § 19.2-390.

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

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

53 ~~It~~ *Notwithstanding any other provision of law, in any case where a defendant is convicted of a*  
54 *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,*  
55 *committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order*  
56 *that the period of suspension shall be for a length of time at least equal to the statutory maximum*

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57 period for which the defendant might originally have been sentenced to be imprisoned, and the  
 58 defendant shall be placed on probation for that period of suspension subject to revocation by the court.  
 59 The conditions of probation may include such conditions as the court shall determine, including active  
 60 supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61,  
 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  
 62 three years of the probation include active supervision of the defendant under a postrelease supervision  
 63 program operated by the Department of Corrections, and for at least three years of such active  
 64 supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global  
 65 Positioning System) tracking device, or other similar device.

66 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any  
 67 time before the sentence has been completely served, suspend the unserved portion of any such sentence,  
 68 place the person on probation for such time as the court shall determine in accordance with the  
 69 provisions of this section, or otherwise modify the sentence imposed.

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

76 **§ 19.2-303.1. Fixing period of suspension of sentence.**

77 In any case where a court suspends the imposition or execution of a sentence, it may fix the period  
 78 of suspension for a reasonable time, having due regard to the gravity of the offense, without regard up  
 79 to the statutory maximum period for which the defendant might originally have been sentenced to be  
 80 imprisoned.

81 **§ 19.2-306. Revocation of suspension of sentence and probation.**

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

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

97 C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of  
 98 suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke  
 99 the suspension, and the court may pronounce whatever sentence might have been originally imposed or  
 100 (ii) if the court originally suspended the execution of the sentence, the court shall revoke the suspension  
 101 and the original sentence shall be in full force and effect revoke the suspension and impose a sentence  
 102 in accordance with the provisions of § 19.2-306.1. The court may again suspend all or any part of this  
 103 sentence for a period up to the statutory maximum period for which the defendant might originally have  
 104 been sentenced to be imprisoned, less any time already served, and may place the defendant upon terms  
 105 and conditions or probation. The court shall measure the period of any suspension of sentence from the  
 106 date of the entry of the original sentencing order.

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

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

114 **§ 19.2-306.1. Limitation on sentence upon revocation of suspension of sentence; exceptions.**

115 A. For the purposes of this section, "technical violation" means a violation based on the  
 116 probationer's failure to (i) report any arrest, including traffic tickets, within three days to the probation  
 117 officer; (ii) maintain regular employment or notify the probation officer of any changes in employment;

(iii) report within three days of release from incarceration; (iv) permit the probation officer to visit his home and place of employment; (v) follow the instructions of the probation officer, be truthful and cooperative, and report as instructed; (vi) refrain from the use of alcoholic beverages to the extent that it disrupts or interferes with his employment or orderly conduct; (vii) refrain from the use, possession, or distribution of controlled substances or related paraphernalia; (viii) refrain from the use, ownership, possession, or transportation of a firearm; (ix) gain permission to change his residence or remain in the Commonwealth or other designated area without permission of the probation officer; or (x) maintain contact with the probation officer whereby his whereabouts are no longer known to the probation officer. Multiple technical violations arising from a single course of conduct or a single incident or considered at the same revocation hearing shall not be considered separate technical violations for the purposes of sentencing pursuant to this section.

B. If the court finds the basis of a violation of the terms and conditions of a suspended sentence or probation is that the defendant was convicted of a criminal offense that was committed after the date of the suspension, or has violated another condition other than (i) a technical violation or (ii) a good conduct violation that did not result in a criminal conviction, then the court may revoke the suspension and impose or resuspend any or all of that period previously suspended.

C. The court shall not impose a sentence of a term of incarceration upon a first technical violation of the terms and conditions of a suspended sentence or probation, and there shall be a presumption against imposing a sentence of a term of incarceration for any second technical violation of the terms and conditions of a suspended sentence or probation. However, if the court finds, by a preponderance of the evidence, that the defendant committed a second technical violation and he cannot be safely diverted from incarceration through less restrictive means, the court may impose not more than 14 days of incarceration for a second technical violation. The court may impose whatever sentence might have been originally imposed for a third or subsequent technical violation. For the purposes of this subsection, a first technical violation based on clause (viii) or (x) of subsection A shall be considered a second technical violation, and any subsequent technical violation also based on clause (viii) or (x) of subsection A shall be considered a third or subsequent technical violation.

D. The limitations on sentencing in this section shall not apply to the extent that an additional term of incarceration is necessary to allow a defendant to be evaluated for or to participate in a court-ordered drug, alcohol, or mental health treatment program. In such case, the court shall order the shortest term of incarceration possible to achieve the required evaluation or participation.