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HOUSE BILL NO. 617

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 17.1-805 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 17.1-805.1, relating to discretionary sentencing guidelines; prior convictions and juvenile adjudications.

Patrons—Bourne, Bennett-Parker, Clark, Hope, Jenkins, Kory, Maldonado, McQuinn, Price, Scott, D.L., Simon and Simonds; Senator: Morrissey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 17.1-805 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 17.1-805.1 as follows:

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years; or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of 40 years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than 40 years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving, or distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2, or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, or the United States or its territories where the defendant was sentenced for such prior offense within the 10 years preceding the date of the commission of the present offense. Previous

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58 *convictions where 10 or more years have elapsed between the date of the defendant's sentencing for*
59 *such prior offense and commission of the present offense shall not include a prior adult conviction*
60 *unless the prior adult conviction was for a violent felony offense punishable by a maximum term of*
61 *imprisonment of 40 years or more, the defendant was sentenced to an active prison term of more than*
62 *12 months for the offense, and the defendant has committed another violent felony within a 15-year*
63 *period between the date of the defendant's sentencing for the prior offense and commission of the*
64 *present offense.*

65 *Previous convictions shall not include any juvenile adjudications of delinquency or any juvenile*
66 *convictions unless the juvenile was tried as an adult and the conviction was for a violent felony offense*
67 *punishable by a maximum term of imprisonment of 40 years or more, the defendant was sentenced to an*
68 *active prison term of more than 12 months, and the date of offense was within the 10 years preceding*
69 *sentencing for the present offense.*

70 C. For purposes of this chapter, violent felony offenses shall include any felony violation of
71 § 16.1-253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32,
72 18.2-32.1, 18.2-32.2, 18.2-33, or 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of
73 § 18.2-40 or 18.2-41; any violation of clause (c)(i) or (ii) of subsection B of § 18.2-46.3; any violation
74 of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation
75 of § 18.2-48, 18.2-48.1, or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3,
76 18.2-51.4, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, or 18.2-55; any
77 violation of subsection B of § 18.2-57; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or
78 18.2-58.1; any felony violation of § 18.2-60.1, 18.2-60.3, or 18.2-60.4; any violation of § 18.2-61,
79 18.2-64.1, 18.2-67.1, 18.2-67.2, former § 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a
80 third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in
81 violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of
82 subsection A of § 18.2-67.4:1; any violation of subsection A of § 18.2-77; any Class 3 felony violation
83 of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of § 18.2-85, 18.2-89, 18.2-90,
84 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of
85 § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any
86 felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any felony
87 violation of subsection A or B of § 18.2-280; any violation of § 18.2-281; any felony violation of
88 subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation of § 18.2-286.1,
89 18.2-287.2, 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any felony violation of
90 subsection C of § 18.2-308.1 or § 18.2-308.2; any violation of § 18.2-308.2:1 or subsection M or N of
91 § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312; any former felony violation of § 18.2-346; any
92 felony violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356,
93 18.2-357, or 18.2-357.1; any violation of former § 18.2-358; any violation of subsection B of
94 § 18.2-361; any violation of subsection B of § 18.2-366; any violation of § 18.2-368, 18.2-370, or
95 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting
96 in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of §
97 18.2-374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second or subsequent offense under
98 §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408,
99 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; any felony violation of
100 § 18.2-460, 18.2-474.1, or 18.2-477.1; any violation of § 18.2-477, 18.2-478, 18.2-480, 18.2-481, or
101 18.2-485; any violation of § 37.2-917; any violation of § 52-48; any violation of § 53.1-203; any
102 conspiracy or attempt to commit any offense specified in this subsection, or any substantially similar
103 offense under the laws of any state, the District of Columbia, or the United States or its territories.

104 **§ 17.1-805.1. Limitations on previous convictions for sentencing enhancements.**

105 A. No juvenile adjudication of delinquency shall serve as evidence of an element of any felony status
106 offense or other offense, nor shall any juvenile adjudication of delinquency serve as the basis for any
107 sentencing enhancement in an adult criminal case.

108 B. A prior adult conviction and sentence shall not serve as evidence of an element of any felony
109 status offense or other offense, and may not serve as the basis for any sentencing enhancement in an
110 adult criminal case, if a period of 10 or more years has elapsed between the date of the defendant's
111 sentencing for that offense and commission of the present offense, unless the prior adult conviction was
112 for a violent felony offense punishable by a maximum term of imprisonment of 40 years or more, the
113 defendant was sentenced to an active prison term of more than 12 months for the offense, and the
114 defendant has committed another violent felony within a 15-year period between the date of the
115 defendant's sentencing for the prior offense and commission of the present offense.