

LD3309729

SENATE BILL NO. 543

Offered January 25, 1994

A BILL to amend and reenact § 53.1-151 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-297.1, relating to sentence for third conviction of a violent felony; ineligibility for parole, probation, suspension of sentence or good time allowance; penalty.

Patrons—Saslaw, Calhoun, Howell, Stolle, Trumbo and Woods

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-151 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-297.1 as follows:

§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.

Any person convicted of three separate felony offenses involving acts of violence, as defined in this subsection, against another person when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction, shall, upon conviction of the third offense, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is alleged in the indictment on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such felony offenses involving acts of violence. For the purposes of this section, "acts of violence" means the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

a. First and second degree murder and voluntary manslaughter under Article 1;

b. Mob-related felonies under Article 2;

c. Any kidnapping or abduction felony under Article 3;

d. Any felony assault or bodily wounding under Article 4;

e. Robbery under § 18.2-58; and

f. Any criminal sexual assault punishable as a felony under Article 7.

Prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed under "acts of violence" if such offense would be a felony if committed in the Commonwealth.

§ 53.1-151. Eligibility for parole.

A. Except as herein otherwise provided, every person convicted of a felony and sentenced and committed by a court under the laws of this Commonwealth to the Department of Corrections, whether or not such person is physically received at a Department of Corrections facility, or as provided for in § 19.2-308.1:

1. For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment imposed, or after serving twelve years of the term of imprisonment imposed if one-fourth of the term of imprisonment imposed is more than twelve years;

2. For the second time, shall be eligible for parole after serving one-third of the term of imprisonment imposed, or after serving thirteen years of the term of imprisonment imposed if one-third of the term of imprisonment imposed is more than thirteen years;

3. For the third time, shall be eligible for parole after serving one-half of the term of imprisonment imposed, or after serving fourteen years of the term of imprisonment imposed if one-half of the term of imprisonment imposed is more than fourteen years;

4. For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the term of imprisonment imposed, or after serving fifteen years of the term of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than fifteen years.

For the purposes of subdivisions 2, 3 and 4 of subsection A and for the purposes of subsections B1 and B2, prior commitments shall include commitments to any correctional facility under the laws of any state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction, kidnapping, burglary, felonious assault or wounding, or ~~manufacturing~~ manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, if such would be a felony if committed in the Commonwealth. Only prior commitments interrupted by a person's being at liberty, or resulting from the commission of a felony while in a correctional facility of the Commonwealth, of any other state or of the United States, shall be included in determining the number of times such person has been convicted, sentenced and committed for the purposes of subdivisions 2, 3 and 4 of subsection A. "At liberty" as used herein ~~shall include~~ includes not only

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60 freedom without any legal restraints, but ~~shall also include~~ *includes* release pending trial, sentencing or
61 appeal, or release on probation or parole or escape. In the case of terms of imprisonment to be served
62 consecutively, the total time imposed shall constitute the term of the imprisonment; in the case of terms
63 of imprisonment to be served concurrently, the longest term imposed shall be the term of imprisonment.
64 In any case in which a parolee commits an offense while on parole, only the sentence imposed for such
65 offense and not the sentence or sentences or any part thereof from which he was paroled shall constitute
66 the term of imprisonment.

67 The Department of Corrections shall make all reasonable efforts to determine prior convictions and
68 commitments of each inmate for the enumerated offenses.

69 B. Persons sentenced to die shall not be eligible for parole. Any person sentenced to life
70 imprisonment who escapes from a correctional facility or from any person in charge of his custody shall
71 not be eligible for parole.

72 B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape or (iii) robbery by
73 the presenting of firearms or other deadly weapon, or any combination of the offenses specified in
74 subdivisions (i), (ii) or (iii) when such offenses were not part of a common act, transaction or scheme
75 shall not be eligible for parole. In the event of a determination by the Department of Corrections that an
76 individual is not eligible for parole under this subsection, the Parole Board may in its discretion, review
77 that determination, and make a determination for parole eligibility pursuant to regulations promulgated
78 by it for that purpose. Any determination of the Parole Board of parole eligibility thereby shall
79 supersede any prior determination of parole ineligibility by the Department of Corrections under this
80 subsection.

81 B2. Any person convicted of three separate felony offenses of manufacturing, selling, giving,
82 distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance,
83 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty
84 as defined in this section between each conviction, shall not be eligible for parole.

85 B3. *Any person convicted of three separate felony offenses involving acts of violence, as defined in*
86 *this subsection, against another person when such offenses were not part of a common act, transaction*
87 *or scheme, and who has been at liberty as defined in this section between each conviction, shall, upon*
88 *conviction of the third offense, be sentenced to life imprisonment and shall not be eligible for parole, be*
89 *placed on probation, have all or any portion of the sentence suspended, or be eligible for any good*
90 *conduct allowance under Chapter 6 (§ 53.1-186 et seq.) of this title. For the purposes of this section,*
91 *"acts of violence" means the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:*

92 *a. First and second degree murder and voluntary manslaughter under Article 1;*

93 *b. Mob-related felonies under Article 2;*

94 *c. Any kidnapping or abduction felony under Article 3;*

95 *d. Any felony assault or bodily wounding under Article 4;*

96 *e. Robbery under § 18.2-58; and*

97 *f. Any criminal sexual assault punishable as a felony under Article 7.*

98 *Prior commitments shall include commitments to a correctional facility under the laws of any state*
99 *or of the United States for any offense substantially similar to those listed under "acts of violence" if*
100 *such offense would be a felony if committed in the Commonwealth, provided the current sentencing*
101 *order contains a finding of such prior commitments.*

102 C. Any person sentenced to life imprisonment for the first time shall be eligible for parole after
103 serving fifteen years, except that if such sentence was for a Class 1 felony violation or the first degree
104 murder of a child under the age of eight in violation of § 18.2-32, he shall be eligible for parole after
105 serving twenty-five years, unless he is ineligible for parole pursuant to subsection B1 or B2, or B3.

106 D. A person who has been sentenced to two or more life sentences, except a person to whom the
107 provisions of subsection B1, B2, or E of this section are applicable, shall be eligible for parole after
108 serving twenty years of imprisonment, except that if either such sentence, or both, was or were for a
109 Class 1 felony violation, and he is not otherwise ineligible for parole pursuant to subsection B1, B2, B3,
110 or E of this section, he shall be eligible for parole only after serving thirty years.

111 E. A person convicted of an offense and sentenced to life imprisonment after being paroled from a
112 previous life sentence shall not be eligible for parole.

113 E1. Any person who has been convicted of murder in the first degree, rape in violation of § 18.2-61,
114 forcible sodomy, animate or inanimate object sexual penetration or aggravated sexual battery and who
115 has been sentenced to a term of years shall, upon a first commitment to the Department of Corrections,
116 be eligible for parole after serving two-thirds of the term of imprisonment imposed or after serving
117 fourteen years of the term of imprisonment imposed if two-thirds of the term of imprisonment imposed
118 is more than fourteen years. If such person has been previously committed to the Department of
119 Corrections, such person shall be eligible for parole after serving three-fourths of the term of
120 imprisonment imposed or after serving fifteen years of the terms of imprisonment imposed if
121 three-fourths of the term of imprisonment imposed is more than fifteen years.

F. If the sentence of a person convicted of a felony and sentenced to the Department is partially suspended, he shall be eligible for parole based on the portion of such sentence execution which was not suspended.

G. The eligibility time for parole as specified in subsections A, C and D of this section may be modified as provided in §§ 53.1-191, 53.1-197 and 53.1-198.

H. The time for eligibility for parole as specified in subsection D of this section shall apply only to those criminal acts committed on or after July 1, 1976.

I. The provisions of subdivisions 2, 3 and 4 of subsection A shall apply only to persons committed to the Department of Corrections on or after July 1, 1979, but such persons' convictions and commitments shall include all felony convictions and commitments without regard to the date of such convictions and commitments.

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