

LD9606729

## SENATE BILL NO. 543

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on March 8, 1994)

(Patron Prior to Substitute—Senator Saslaw)

A BILL to amend and reenact §§ 19.2-264.3, 53.1-151 and 53.1-199 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-295.1 and 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-264.3, 53.1-151 and 53.1-199 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 19.2-295.1 and 19.2-297.1 as follows:

§ 19.2-264.3. Procedure for trial by jury.

A. In any case in which the offense may be punishable by death which is tried before a jury the court shall first submit to the jury the issue of guilt or innocence of the defendant of the offense charged in the indictment, or any other offense supported by the evidence for which a lesser punishment is provided by law and the penalties therefor.

B. If the jury finds the defendant guilty of an offense for which the death penalty may not be imposed, it shall fix the punishment for such offense as provided by law in § 19.2-295.1.

C. If the jury finds the defendant guilty of an offense which may be punishable by death, then a separate proceeding before the same jury shall be held as soon as is practicable on the issue of the penalty, which shall be fixed as is provided in § 19.2-264.4.

If the sentence of death is subsequently set aside or found invalid, and the defendant or the Commonwealth requests a jury for purposes of resentencing, the court shall impanel a different jury on the issue of penalty.

§ 19.2-295.1 Sentencing proceeding by the jury after conviction for a felony.

In cases of trial by jury, upon a finding that the defendant is guilty of a felony, a separate proceeding limited to the ascertainment of punishment shall be held as soon as practicable before the same jury. At such proceeding, the Commonwealth shall present the defendant's prior criminal convictions by certified, attested or exemplified copies of the record of conviction, including adult convictions and juvenile convictions and adjudications of delinquency. Prior convictions shall include convictions and adjudications of delinquency under the laws of any state, the District of Columbia, the United States or its territories. The Commonwealth shall provide to the defendant fourteen days prior to trial certified copies of the defendant's prior criminal convictions which it intends to introduce at sentencing. After the Commonwealth has introduced such evidence of prior convictions, the defendant may introduce relevant, admissible evidence related to punishment. Nothing in this section shall prevent the Commonwealth or the defendant from introducing relevant, admissible evidence in rebuttal. If the defendant is found guilty of an offense other than a felony, punishment shall be fixed as otherwise provided by law.

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

A. Any person convicted of two or more separate acts of violence 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 a third or subsequent act of violence, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of 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 malicious felonious assault or malicious bodily wounding under Article 4;

e. Robbery under § 18.2-58 and carjacking under § 18.2-58.1; or

f. Any criminal sexual assault punishable as a felony under Article 7; (ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this section.

B. 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 "act of violence" if such offense would be a felony if committed in the Commonwealth.

60     *The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its*  
61 *intention to seek punishment pursuant to this section.*

62     *C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole*  
63 *and shall not be eligible for any good conduct allowance under Chapter 6 (§ 53.1-186 et seq.) of Title*  
64 *53.1. However, any person subject to the provisions of this section who has reached the age of sixty-five*  
65 *or older and who has served at least five years of the sentence imposed may petition the Parole Board*  
66 *for conditional release. The Parole Board shall promulgate regulations to implement the provisions of*  
67 *this subsection.*

68     § 53.1-151. Eligibility for parole.

69     A. Except as herein otherwise provided, every person convicted of a felony and sentenced and  
70 committed by a court under the laws of this Commonwealth to the Department of Corrections, whether  
71 or not such person is physically received at a Department of Corrections facility, or as provided for in  
72 § 19.2-308.1:

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

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

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

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

85     For the purposes of subdivisions 2, 3 and 4 of subsection A and for the purposes of subsections B1  
86 and B2, prior commitments shall include commitments to any correctional facility under the laws of any  
87 state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible  
88 sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction,  
89 kidnapping, burglary, felonious assault or wounding, or ~~manufacturing~~ *manufacturing*, selling, giving,  
90 distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, if  
91 such would be a felony if committed in the Commonwealth. Only prior commitments interrupted by a  
92 person's being at liberty, or resulting from the commission of a felony while in a correctional facility of  
93 the Commonwealth, of any other state or of the United States, shall be included in determining the  
94 number of times such person has been convicted, sentenced and committed for the purposes of  
95 subdivisions 2, 3 and 4 of subsection A. "At liberty" as used herein ~~shall include~~ *includes* not only  
96 freedom without any legal restraints, but ~~shall also include~~ *includes* release pending trial, sentencing or  
97 appeal, or release on probation or parole or escape. In the case of terms of imprisonment to be served  
98 consecutively, the total time imposed shall constitute the term of the imprisonment; in the case of terms  
99 of imprisonment to be served concurrently, the longest term imposed shall be the term of imprisonment.  
100 In any case in which a parolee commits an offense while on parole, only the sentence imposed for such  
101 offense and not the sentence or sentences or any part thereof from which he was paroled shall constitute  
102 the term of imprisonment.

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

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

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

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

121     B3. *Any person sentenced to life imprisonment pursuant to § 19.2-297.1 shall not be eligible for*

parole and shall not be eligible for any good conduct allowance under Chapter 6 (§ 53.1-186 et seq.) of this title, except that any person subject to the provisions of this subsection who has reached age sixty-five or older and who has served at least five years of the sentence imposed pursuant to § 19.2-295.1 may petition the Parole Board to be granted a conditional release from incarceration. The Parole Board shall promulgate regulations to implement the provisions of this paragraph.

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

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

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

E1. Any person who has been convicted of murder in the first or second degree, rape in violation of § 18.2-61, forcible sodomy, animate or inanimate object sexual penetration ~~or~~, aggravated sexual battery or any of the following acts of violence in violation of Chapter 4 (§ 18.2-30 et. seq.) of Title 18.2:

- (i) voluntary manslaughter under Article 1;
- (ii) mob-related felonies under Article 2;
- (iii) any kidnapping or abduction felony under Article 3;
- (iv) any malicious felonious assault or malicious bodily wounding under Article 4; or
- (v) robbery under § 18.2-58 and who has been sentenced to a term of years shall, upon a first commitment to the Department of Corrections, be eligible for parole after serving two-thirds of the term of imprisonment imposed or after serving fourteen years of the term of imprisonment imposed if two-thirds of the term of imprisonment imposed is more than fourteen years. If such person has been previously committed to the Department of Corrections, such person shall be eligible for parole after serving three-fourths of the term of imprisonment imposed or after serving fifteen years of the terms of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than fifteen years. For purposes of this subsection, prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed above in this subsection if such offense would be a felony if committed in the Commonwealth.

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.

§ 53.1-199. Eligibility for good conduct allowance; application.

Every person who, on or after July 1, 1981, has been convicted of a felony and every person convicted of a misdemeanor and to whom the provisions of §§ 53.1-151, 53.1-152 or § 53.1-153 apply, and every person who, in accordance with § 53.1-198, chooses the system of good conduct allowances set out herein, may be entitled to good conduct allowance not to exceed the amount set forth in § 53.1-201. Such good conduct allowance shall be applied to reduce the person's maximum term of confinement while he is confined in any state correctional facility. One-half of the credit allowed under the provisions of § 53.1-201 shall be applied to reduce the period of time a person shall serve before being eligible for parole.

Any person who, ~~on or after July 1, 1993,~~ has been sentenced upon a conviction of murder in the first or second degree, rape in violation of § 18.2-61, forcible sodomy, animate or inanimate object sexual penetration, ~~or~~ aggravated sexual battery or any of the following acts of violence in violation of Chapter 4 (§ 18.2-30 et. seq.) of Title 18.2:

- (i) voluntary manslaughter under Article 1;
- (ii) mob-related felonies under Article 2;
- (iii) any kidnapping or abduction felony under Article 3;
- (iv) any malicious felonious assault or malicious bodily wounding under Article 4; or

183 (v) *robbery under § 18.2-58* and any person who has been sentenced to a term of life imprisonment  
184 or two or more life sentences shall be classified within the system established by § 53.1-201. Such  
185 person shall be eligible for no more than ten days good conduct credit for each thirty days served,  
186 regardless of the class to which he is assigned. One-half of such credit shall be applied to reduce the  
187 period of time he shall serve before being eligible for parole. Additional good conduct credits may be  
188 approved by the Board for such persons in accordance with § 53.1-191.  
189 **2. The provisions of this act amending §§ 53.1-151 and 53.1-199 shall not take affect unless**  
190 **reenacted by a special session of the legislature in 1994.**