

LD3349812

HOUSE BILL NO. 1281

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 19.2-295.1, relating to sentence for third conviction of a violent felony; ineligibility for parole, probation, suspension of sentence or good time allowance; penalty.

Patrons—Forbes, Baker, Bennett, Cantor, Cox, Croshaw, Crouch, Davies, Dudley, Fisher, Giesen, Griffith, Howell, Ingram, Johnson, Katzen, Kilgore, Marshall, Martin, May, Mayer, McDonnell, Miller, Mims, Moore, Moss, Murphy, Orrock, Putney, Reid, Reynolds, Ruff, Sherwood, Tata, Wagner, Wardrup, Way and Wilkins; Senator: Stolle

Referred to 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 19.2-295.1 as follows:

§ 19.2-295.1. Sentence of person twice previously convicted of certain violent felonies.

A. 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 (i) the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

a. 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;

(ii) conspiracy to commit any of the violations enumerated in clause (i) of this subsection; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this subsection.

Prior convictions shall include convictions under the laws of any state or of the United States, including convictions of a juvenile tried as an adult pursuant to the provisions of Article 7 (§ 16.1-269 et seq.) of Chapter 11 of Title 16.1 or similar statutes of another state or 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.

B. In cases tried pursuant to this section by a jury, the proceeding shall be bifurcated. The court shall first submit to the jury the issue of guilt or innocence of the defendant of the felony offense or offenses involving acts of violence charged in the indictment, or any other offense supported by the evidence not enumerated in subsection A for which punishment is provided by law and the penalties therefor.

If the jury finds the defendant guilty of an offense not subject to the provisions of this section, it shall fix the punishment for such offense as provided by law.

If the jury finds the defendant guilty of an offense subject to the provisions of this section, then a separate proceeding before the same jury shall be held as soon as is practicable on the issue of whether the defendant has previously been twice convicted of a felony offense involving acts of violence and on the issue of the penalty. The punishment shall be fixed as is provided in subsection A if the jury finds that the defendant has previously been twice convicted of a felony offense involving acts of violence. If the jury finds that the defendant has not previously been twice convicted of a felony offense involving acts of violence, punishment shall be fixed by the jury as otherwise provided by law.

If the sentence imposed pursuant to the provisions of this section 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.

§ 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

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60 or not such person is physically received at a Department of Corrections facility, or as provided for in
61 § 19.2-308.1:

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

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

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

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

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

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

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

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

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

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

- 117 a. Murder and voluntary manslaughter under Article 1;
118 b. Mob-related felonies under Article 2;
119 c. Any kidnapping or abduction felony under Article 3;
120 d. Any felony assault or bodily wounding under Article 4;
121 e. Robbery under § 18.2-58; and

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 subsection; and (iii)
 violations as a principal in the second degree or accessory before the fact of the provisions enumerated
 in clause (i) of this subsection.

Applicable convictions shall include convictions under the laws of any state or of the United States,
 including convictions of a juvenile tried as an adult pursuant to the provisions of Article 7 (§ 16.1-269
 et seq.) of Chapter 11 of Title 16.1 or similar statutes of another state or 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.

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 degree, rape in violation of § 18.2-61,
 forcible sodomy, animate or inanimate object sexual penetration or aggravated sexual battery 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.

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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