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HOUSE BILL NO. 737

Offered January 25, 1994

A BILL to amend and reenact § 19.2-299 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-10.1, relating to crimes by corporations.

Patrons—Robinson; Senators: Benedetti and Earley

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §19.2-299 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-10.1 as follows:

§18.2-10.1. Corporate business association crime; how punished.

A corporation, limited liability company, a limited partnership or any other legal entity or association may be criminally liable for the unlawful acts of its directors, officers, agents or employees if such acts were committed during the course of employment and within the scope of the authority of such director, officer, agent or employee and where the unlawful act was done, in whole or in part, for the benefit of such an entity. In all instances in which an entity is convicted of a criminal offense, the authorized punishment shall be, unless otherwise specifically provided, as follows:

1. For Class 1, 2 or 3 felonies, a fine of not less than \$2,000 nor more than \$ 250,000;

2. For Class 4, 5 or 6 felonies, a fine of not less than \$1,000 nor more than \$ 100,000;

3. For unclassified felonies, a fine of not less than \$1,000 nor more than \$250,000; and

4. For any misdemeanor, a fine of not more than \$2,500.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried upon a felony charge and is adjudged guilty of such charge, the court may, or on the motion of the defendant shall, before imposing sentence direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9-169, of this or any other state or of the United States; to the community corrections resources board, as defined in § 53.1-183, where the accused has been referred by the court for placement in a community diversion program; and to any agency where the accused is referred for treatment by the court or by probation and parole services, and shall be made available to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted involved a crime against the person, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant

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60 with illicit drug operations or markets.

61 *D. As part of any presentence investigation conducted pursuant to subsection A when the defendant*
62 *is other than a natural person, the presentence report shall include, where reasonably available, the*
63 *following information: (i) the net worth of the defendant, (ii) the relative culpability of the conduct, (iii)*
64 *the extent of the management's knowledge or participation in the illegal act, (iv) the economic benefit to*
65 *the defendant, and (v) the economic harm to the victim.*