

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 17.1-805 of the Code of Virginia, relating to violent felony offenses;*  
 3 *penalty.*

4  
 5 Approved

[S 853]

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 17.1-805 of the Code of Virginia is amended and reenacted as follows:**

8 § 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

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

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

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

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

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

47 B. For purposes of this chapter, previous convictions shall include prior adult convictions and  
 48 juvenile convictions and adjudications of delinquency based on an offense which would have been at the  
 49 time of conviction a felony if committed by an adult under the laws of any state, the District of  
 50 Columbia, the United States or its territories.

51 C. For purposes of this chapter, violent felony offenses shall include any violation of §§ 18.2-31,  
 52 18.2-32, 18.2-32.1, 18.2-33, or § 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of  
 53 § 18.2-40 or § 18.2-41; any Class 5 felony violation of § 18.2-47; any felony violation of §§ 18.2-48,  
 54 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, 18.2-51.4, 18.2-52,  
 55 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or § 18.2-55; or any felony violation of § 18.2-57.2;  
 56 any violation of § 18.2-58 or § 18.2-58.1; any felony violation of § 18.2-60.1 or § 18.2-60.3; any

57 violation of §§ 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-67.3 ~~or~~ §, 18.2-67.5, or  
58 § 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or  
59 attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of  
60 § 18.2-63; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any  
61 Class 3 felony violation of § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92 or  
62 § 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of §§ 18.2-153; any Class  
63 4 felony violation of § 18.2-154 ~~or~~; any Class 4 felony violation of § 18.2-155; any felony violation of  
64 § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any violation of subsection B of  
65 § 18.2-280; any violation of §§ 18.2-281, 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of  
66 subsection A of § 18.2-282; any violation of subsection A of § 18.2-300; any felony violation of  
67 §§ 18.2-308.1 and 18.2-308.2; any violation of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2;  
68 any violation of § 18.2-308.3 or § 18.2-312; any violation of subdivision (2) or (3) of § 18.2-355; any  
69 violation of § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of  
70 § 18.2-366; any violation of §§ 18.2-368, 18.2-370 or § 18.2-370.1; any violation of subsection A of  
71 § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any  
72 violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any  
73 second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or  
74 § 18.2-406; any violation of §§ 18.2-408, 18.2-413, 18.2-414 or § 18.2-433.2; any felony violation of  
75 §§ 18.2-460, 18.2-474.1 or § 18.2-477.1; any violation of §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485;  
76 any violation of § 53.1-203; or any conspiracy or attempt to commit any offense specified in this  
77 subsection, and any substantially similar offense under the laws of any state, the District of Columbia,  
78 the United States or its territories.

79 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**  
80 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**  
81 **is \$0 in FY 2009.**