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SENATE BILL NO. 927

Offered January 15, 1999

A BILL to amend and reenact §§ 19.2-298.01, 19.2-368.2, and 30-19.1:5 of the Code of Virginia, relating to Virginia Criminal Sentencing Commission.

Patrons—Gartlan and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-298.01, 19.2-368.2, and 30-19.1:5 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-298.01. Use of discretionary sentencing guidelines.

A. In all felony cases, other than Class 1 felonies, the court shall (i) have presented to it the appropriate discretionary sentencing guidelines worksheets and (ii) review and consider the suitability of the applicable discretionary sentencing guidelines established pursuant to Chapter 44 (~~§ 17-232 et seq.~~) 8 (~~§ 17.1-800 et seq.~~) of Title 17. Before imposing sentence, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection. In cases tried by a jury, the jury shall not be presented any information regarding sentencing guidelines.

B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure.

C. In felony cases, other than Class 1 felonies, tried by a jury and in felony cases tried by the court without a jury upon a plea of not guilty, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets. In felony cases tried upon a plea of guilty, including cases which are the subject of a plea agreement, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the accused, the court and the attorney for the Commonwealth, the worksheets shall be prepared by the attorney for the Commonwealth.

D. Except as provided in subsection E, discretionary sentencing guidelines worksheets prepared pursuant to this section shall be subject to the same distribution as presentence investigation reports prepared pursuant to subsection A of § 19.2-299.

E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days.

F. The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis of any other post-conviction relief.

G. The provisions of this section shall apply only to felony cases in which the offense is committed on or after January 1, 1995, and for which there are discretionary sentencing guidelines. For purposes of the discretionary sentencing guidelines only, a person sentenced to a boot camp incarceration program pursuant to § 19.2-316.1, a detention center incarceration program pursuant to § 19.2-316.2 or a diversion center incarceration program pursuant to § 19.2-316.3 shall be deemed to be sentenced to a term of incarceration.

§ 19.2-368.2. Definitions.

For the purpose of this chapter:

"Claimant" means the person filing a claim pursuant to this chapter.

"Commission" means the Virginia Workers' Compensation Commission.

"Crime" means an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-51.4 or § 18.2-266.

"Family," when used with reference to a person, means (i) any person related to such person within the third degree of consanguinity or affinity, (ii) any person residing in the same household with such person, or (iii) a spouse.

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60 "Victim" means a person who suffers personal physical injury or death as a direct result of a crime
61 including a person who is injured or killed as a result of foreign terrorism or who suffers personal
62 emotional injury as a direct result of being the subject of a violent felony offense as defined in
63 subsection C of § ~~17-237~~17.1-805, or attempted robbery or abduction.

64 § 30-19.1:5. Impact statements to be prepared by the Virginia Criminal Sentencing Commission.

65 In conjunction with its duties under § ~~17-235~~17.1-803, the Virginia Criminal Sentencing Commission
66 shall detail the impact of each bill filed to which the provisions of § 30-19.1:4 apply. Such statement
67 shall include, but not be limited to, details as to any increase or decrease in adult offender population;
68 any necessary adjustments in guideline midpoints for the crime or crimes affected by the bill as well as
69 adjustments in guideline midpoints for other crimes related to the implementation of the bill which, in
70 the opinion of the Commission, are necessary and appropriate.

71 The Commission shall forward copies of such impact statements to the Clerk of the House of
72 Delegates for transmittal to each patron of the legislation and to the chairman of each committee of the
73 General Assembly to consider the same and to the Department of Planning and Budget.