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HOUSE BILL NO. 1316

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 19.2-306 of the Code of Virginia, relating to second probation violation; mandatory revocation of sentence or probation; penalty.

Patron—Cosgrove

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-306 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-306. Revocation of suspension of sentence and probation; penalty.

A.1. In any case in which the court has suspended the execution or imposition of sentence, the court may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time within the probation period, or within the period of suspension fixed by the court. If neither a probation period nor a period of suspension was fixed by the court, then the court may revoke the suspension for any cause the court deems sufficient that occurred within the maximum period for which the defendant might originally have been sentenced to be imprisoned.

2. In any case in which the court has suspended the execution or imposition of sentence and in which the defendant has previously been found to have violated probation or the terms of the suspension of sentence, the court shall revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time within the same probation period or within the same period of suspension fixed by the court. If neither a probation period nor a period of suspension was fixed by the court, then the court shall revoke the suspension for any cause the court deems sufficient that occurred within the maximum period for which the defendant might originally have been sentenced to be imprisoned.

B. The court may not conduct a hearing to revoke the suspension of sentence unless the court, within one year after the expiration of the period of probation or the period of suspension, issues process to notify the accused or to compel his appearance before the court. If neither a probation period nor a period of suspension was fixed by the court, then the court shall issue process within one year after the expiration of the maximum period for which the defendant might originally have been sentenced to be incarcerated. Such notice and service of process may be waived by the defendant, in which case the court may proceed to determine whether the defendant has violated the conditions of suspension.

C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke the suspension, and the court may pronounce whatever sentence might have been originally imposed or (ii) if the court originally suspended the execution of the sentence, the court shall revoke the suspension and the original sentence shall be in full force and effect. ~~The~~Unless the defendant is proceeded against under subsection A 2, the court may again suspend all or any part of this sentence and may place the defendant upon terms and conditions or probation.

D. If any court has, after hearing, found no cause to impose a sentence that might have been originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which the hearing was held, shall be barred.

E. Nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit court having criminal jurisdiction from a judgment or order revoking any suspended sentence.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$110,445,130 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

HB1316