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## SENATE BILL NO. 1540

Offered January 23, 2009

A BILL to amend and reenact § 17.1-803 of the Code of Virginia, relating to sentencing guidelines; home/electronic incarceration.

Patrons—Stolle, Howell, Lucas, Marsh, Quayle, Reynolds and Stosch

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 17.1-803 of the Code of Virginia is amended and reenacted as follows:**

§ 17.1-803. Sentencing Commission; powers and duties.

The Commission shall:

1. Develop, maintain and modify as may be deemed necessary, a proposed system of statewide discretionary sentencing guidelines for use in all felony cases which will take into account historical data, when available, concerning time actually served for various felony offenses committed prior to January 1, 1995, and sentences imposed for various felony offenses committed on or after January 1, 1995, and such other factors as may be deemed relevant to sentencing.

2. Prepare, periodically update, and distribute sentencing worksheets for the use of sentencing courts which, when used, will produce a recommended sentencing range for a felony offense in accordance with the discretionary sentencing guidelines established pursuant to subdivision 1.

3. Prepare, periodically update, and distribute a form for the use of sentencing courts which will assist such courts in recording the reason or reasons for any sentence imposed in a felony case which is greater or less than the sentence recommended by the discretionary sentencing guidelines.

4. Prepare guidelines for sentencing courts to use in determining appropriate candidates for alternative sanctions which may include, but not be limited to (i) fines and day fines, (ii) boot camp incarceration, (iii) local correctional facility incarceration, (iv) diversion center incarceration, (v) detention center incarceration, (vi) home incarceration/electronic monitoring, (vii) day or evening reporting, (viii) probation supervision, (ix) intensive probation supervision, and (x) performance of community service.

5. Develop an offender risk assessment instrument for use in all felony cases, based on a study of Virginia felons, that will be predictive of the relative risk that a felon will become a threat to public safety.

6. Apply the risk assessment instrument to offenders convicted of any felony that is not specified in (i) subdivision 1, 2 or 3 of subsection A of § 17.1-805 or (ii) subsection C of § 17.1-805 under the discretionary sentencing guidelines; and shall determine, on the basis of such assessment and with due regard for public safety needs, the feasibility of achieving the goal of placing 25 percent of such offenders in one of the alternative sanctions listed in subdivision 4. If the Commission so determines that achieving the 25 percent or a higher percentage goal is feasible, it shall incorporate such goal into the discretionary sentencing guidelines, to become effective on January 1, 1996. If the Commission so determines that achieving the goal is not feasible, the Commission shall report that determination to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia on or before December 1, 1995, and shall make such recommendations as it deems appropriate recommend to the sentencing judge alternative sanctions, including but not limited to those enumerated in subdivision 4. Consideration shall be given to recommending home/electronic incarceration for low-risk nonviolent offenders with a sentencing guideline midpoint of 12 months or more who are recommended for incarceration in a facility.

7. Monitor sentencing practices in felony cases throughout the Commonwealth, including the use of the discretionary sentencing guidelines, and maintain a database containing the information obtained.

8. Monitor felony sentence lengths, crime trends, correctional facility population trends and correctional resources and make recommendations regarding projected correctional facilities capacity requirements and related correctional resource needs.

9. Study felony statutes in the context of judge-sentencing and jury-sentencing patterns as they evolve after January 1, 1995, and make recommendations for the revision of general criminal offense statutes to provide more specific offense definitions and more narrowly prescribed ranges of punishment.

10. Report upon its work and recommendations annually on or before December 1 to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia. Such report shall include any modifications to the discretionary sentencing guidelines adopted by the Commission pursuant to subdivision 1 and shall be accompanied by a statement of the reasons for those

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**59** modifications.

**60** 11. Perform such other functions as may be otherwise required by law or as may be necessary to

**61** carry out the provisions of this chapter.