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HOUSE BILL NO. 295

Offered January 8, 2020

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A BILL to amend and reenact §§ 19.2-303 and 19.2-303.3 of the Code of Virginia, relating to maximum term of probation.

Patron—Scott

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-303 and 19.2-303.3 of the Code of Virginia are amended and reenacted as follows:****§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.**

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. *If the court places the defendant on probation for any offense other than a violent felony as defined in § 17.1-805, an act of violence as defined in § 19.2-297.1, or an offense for which registration is required pursuant to § 9.1-902, the term of probation shall not exceed five years.* The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of any offense for which a report to the Central Criminal Records Exchange is required in accordance with subsection A of § 19.2-390, shall determine whether a copy of the defendant's fingerprints or fingerprint identification information has been provided by a law-enforcement officer to the clerk of court for each such offense. In any case where fingerprints or fingerprint identification information has not been provided by a law-enforcement officer to the clerk of court, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition of probation or of the suspension of the imposition or execution of any sentence for such offense. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court

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59 shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of
60 subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court
61 shall order that at least three years of the probation include active supervision of the defendant under a
62 postrelease supervision program operated by the Department of Corrections, and for at least three years
63 of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS
64 (Global Positioning System) tracking device, or other similar device.

65 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any
66 time before the sentence has been completely served, suspend the unserved portion of any such sentence,
67 place the person on probation for such time as the court shall determine, or otherwise modify the
68 sentence imposed.

69 If a person has been sentenced for a felony to the Department of Corrections but has not actually
70 been transferred to a receiving unit of the Department, the court which heard the case, if it appears
71 compatible with the public interest and there are circumstances in mitigation of the offense, may, at any
72 time before the person is transferred to the Department, suspend or otherwise modify the unserved
73 portion of such a sentence. The court may place the person on probation for such time as the court shall
74 determine.

75 **§ 19.2-303.3. Sentence to local community-based probation services; services agency;**
76 **requirements for participation; sentencing; and removal from probation; payment of costs towards**
77 **supervision and services.**

78 A. Any offender who is (i) convicted on or after July 1, 1995, of a misdemeanor or a felony that is
79 not a felony act of violence as defined in § 19.2-297.1, and for which the court imposes a total sentence
80 of 12 months or less, and (ii) no younger than 18 years of age or is considered an adult at the time of
81 conviction may be sentenced to a local community-based probation services agency established pursuant
82 to § 9.1-174 by the local governing bodies within that judicial district or circuit. *If the court sentences*
83 *the offender to a local community-based probation services agency for any offense other than a violent*
84 *felony as defined in § 17.1-805, an act of violence as defined in § 19.2-297.1, or an offense for which*
85 *registration is required pursuant to § 9.1-902, the term of probation shall not exceed five years.*

86 B. In those courts having electronic access to the Local Inmate Data System (LIDS) within the
87 courtroom, at the time of sentencing, the clerk of court shall determine by reviewing LIDS, in any case
88 where there is a felony conviction, whether a sample of the offender's blood, saliva, or tissue or an
89 analysis of the sample is stored in the DNA data bank maintained by the Department of Forensic
90 Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. If the clerk has
91 determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which
92 electronic access to LIDS is not available in the courtroom, the court shall order that the offender appear
93 within 30 days before the sheriff or community-based probation officer and allow the sheriff or
94 community-based probation officer to take the required sample. The order shall also require that, if the
95 offender has not appeared and allowed the sheriff or community-based probation officer to take the
96 required sample by the date stated in the order, then the sheriff or community-based probation officer
97 shall report to the court the offender's failure to appear and provide the required sample. The court may
98 order the offender placed under local community-based probation services pursuant to § 9.1-174 upon a
99 determination by the court that the offender may benefit from these services and is capable of returning
100 to society as a productive citizen with a reasonable amount of supervision and intervention including
101 services set forth in § 9.1-176. All or part of any sentence imposed that has been suspended, shall be
102 conditioned upon the offender's successful completion of local community-based probation services
103 established pursuant to § 9.1-174.

104 The court may impose terms and conditions of supervision as it deems appropriate, including that the
105 offender abide by any additional requirements of supervision imposed or established by the local
106 community-based probation services agency during the period of probation supervision.

107 C. Any sworn officer of a local community-based probation services agency established or operated
108 pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173
109 et seq.) may seek a capias from any judicial officer for the arrest of any person on local
110 community-based probation and under its supervision for (i) intractable behavior; (ii) refusal to comply
111 with the terms and conditions imposed by the court; (iii) refusal to comply with the requirements of
112 local community-based probation supervision established by the agency; or (iv) the commission of a new
113 offense while on local community-based probation and under agency supervision. Upon arrest, the
114 offender shall be brought for a hearing before the court of appropriate jurisdiction. After finding that the
115 offender (a) exhibited intractable behavior as defined herein; (b) refused to comply with terms and
116 conditions imposed by the court; (c) refused to comply with the requirements of local community-based
117 probation supervision established by the agency; or (d) committed a new offense while on local
118 community-based probation and under agency supervision, the court may revoke all or part of the
119 suspended sentence and supervision, and commit the offender to serve whatever sentence was originally
120 imposed or impose such other terms and conditions of probation as it deems appropriate or, in a case

121 where the proceeding has been deferred, enter an adjudication of guilt and proceed as otherwise
122 provided by law.

123 "Intractable behavior" is that behavior that, in the determination of the court, indicates an offender's
124 unwillingness or inability to conform his behavior to that which is necessary for successful completion
125 of local community-based probation or that the offender's behavior is so disruptive as to threaten the
126 successful completion of the program by other participants.

127 D. An offender sentenced to or provided a deferred proceeding and placed on community-based
128 probation pursuant to this section may be required to pay an amount towards the costs of his supervision
129 and services received in accordance with subsection D of § 9.1-182.