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SENATE BILL NO. 312

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 19, 2020)

(Patron Prior to Substitute—Senator Stanley)

A BILL to amend and reenact §§ 18.2-10, 19.2-295.2, and 19.2-295.2:1 of the Code of Virginia, relating to postrelease incarceration of felons sentenced for certain offenses.

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-10, 19.2-295.2, and 19.2-295.2:1 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-10. Punishment for conviction of felony; penalty.**

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be a person with intellectual disability pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under 18 years of age at the time of the offense or is determined to be a person with intellectual disability pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of *incarceration* of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.

§ 19.2-295.2. Postrelease supervision of felons sentenced for offenses committed on and after January 1, 1995, and on and after July 1, 2000.

A. At the time the court imposes sentence upon a conviction for any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, in addition to any other punishment imposed if such other punishment includes an active term of incarceration in a state or local correctional facility, except in cases in which the court orders a suspended term of confinement of at least six months, impose a term of ~~postrelease supervision~~ *incarceration, in addition to the active term*, of not less than six months nor more than three years, as the court may determine. Such additional term shall be suspended and the defendant *shall be ordered to be* placed under postrelease supervision upon release from the active term of incarceration. The period of supervision shall be established by the court; however, such period shall not be less than six months nor more than three years. Periods of postrelease supervision imposed pursuant to this section upon more than one felony conviction may be ordered to run concurrently. Periods of postrelease supervision imposed pursuant to this section may be ordered to run concurrently with any period of probation the defendant may also be subject to serve.

B. The period of postrelease supervision shall be under the supervision and review of the Virginia

Parole Board. The Board shall review each felon prior to release and establish conditions of postrelease supervision. Failure to successfully abide by such terms and conditions shall be grounds to terminate the period of postrelease supervision and recommit the defendant to the Department of Corrections or to the local correctional facility from which he was previously released. Procedures for any such termination and recommitment shall be conducted in the same manner as procedures for the revocation of parole.

C. Postrelease supervision programs shall be operated through the probation and parole districts established pursuant to § 53.1-141.

D. Nothing in this section shall be construed to prohibit the court from exercising any authority otherwise granted by law.

§ 19.2-295.2:1. Postrelease incarceration of felons sentenced for certain offenses committed on or after July 1, 2006.

A. For offenses committed on or after July 1, 2006:

1. At the time the court imposes a sentence upon a conviction for a first violation of subsection A of § 18.2-472.1 the court shall impose an added term of postrelease ~~supervision~~ *incarceration* of six months.

2. For a second or subsequent violation of subsection A of § 18.2-472.1 when both violations occurred after July 1, 2006, or a first violation of subsection B of § 18.2-472.1, the court shall impose an added term of postrelease ~~supervision by the Department of Corrections~~ *incarceration* of two years.

3. For a second or subsequent violation of subsection B of § 18.2-472.1 when both violations occurred after July 1, 2006, the court shall impose an added term of postrelease ~~supervision by the Department of Corrections~~ *incarceration* of five years.

Any terms of postrelease ~~supervision~~ *incarceration* imposed pursuant to this section shall be in addition to any other punishment imposed, including any periods of active incarceration or suspended periods of incarceration, if any.

B. The court shall order that any term of postrelease ~~supervision~~ *incarceration* imposed pursuant to this section be suspended, and the defendant be placed on active supervision under a postrelease supervision program operated by the Department of Corrections. The court shall order that the defendant be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device during this period of postrelease supervision. Failure to successfully abide by the terms and conditions of the postrelease supervision program shall be grounds to terminate the period of postrelease supervision and recommit the defendant to the Department of Corrections or to a local correctional facility. Procedures for any such termination shall be conducted after a hearing in the court which originally sentenced the defendant, conducted in a manner consistent with a revocation hearing under § 19.2-306, mutatis mutandis.

C. Nothing in this section shall be construed to prohibit the court from exercising any authority otherwise granted by law.