

20107500D

## SENATE BILL NO. 438

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary  
on February 3, 2020)(Patron Prior to Substitute—Senator Surovell)  
Senate Amendments in [ ] - February 5, 2020

A BILL to amend and reenact § 17.1-803 of the Code of Virginia, relating to judicial performance evaluation; risk assessment tool; use of alternative sanction.

**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. Powers and duties; report.**

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. *The [ sentencing courts Commission ] shall use the recommended sentencing range to determine the cost of incarceration for an offender who is sentenced to the minimum recommended sentence. These costs shall be included on the sentencing guideline form for each offender who qualifies for a risk assessment and receives a recommendation of an alternative sanction based on such assessment.*

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 A 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.

7. *Determine the number of offenders during a judge's term who qualify for the use of the offender risk assessment tool and, on the basis of such assessment, are recommended to receive an alternative sanction and do not receive an alternative sanction. The Commission shall determine the total costs of imposing a sentence on each offender who, following the application of the risk assessment tool, is recommended to receive an alternative sanction but does not receive an alternative sanction during a judge's term.*

8. 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- 9. 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- 10. Study felony statutes in the context of judge-sentencing and jury-sentencing patterns as they

ENGROSSED

SB438ES1

60 evolve after January 1, 1995, and make recommendations for the revision of general criminal offense  
61 statutes to provide more specific offense definitions and more narrowly prescribed ranges of punishment.  
62 ~~10.~~ 11. Report upon its work and recommendations annually on or before December 1 to the General  
63 Assembly, the Governor, and the Chief Justice of the Supreme Court of Virginia. Such report shall  
64 include any modifications to the discretionary sentencing guidelines adopted by the Commission  
65 pursuant to subdivision 1 and shall be accompanied by a statement of the reasons for those  
66 modifications.  
67 ~~11.~~ 12. Perform such other functions as may be otherwise required by law or as may be necessary to  
68 carry out the provisions of this chapter.