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HOUSE BILL NO. 2466

Offered January 20, 2023

A BILL to amend and reenact § 19.2-303 of the Code of Virginia, relating to probation; possession of controlled substance by confidential informant.

Patron—Hodges

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-303 of the Code of Virginia is 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. The court may fix the period of probation for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned. Any period of supervised probation shall not exceed five years from the release of the defendant from any active period of incarceration. The limitation on the period of probation shall not apply to the extent that an additional period of probation is necessary (i) for the defendant to participate in a court-ordered program or (ii) if a defendant owes restitution and is still subject to restitution compliance review hearings in accordance with § 19.2-305.1. 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 Department of Forensic Science DNA data bank sample tracking system within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing the DNA data bank sample tracking system whether a blood, saliva, or tissue sample is stored in 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 is not stored in the DNA data bank, or in any case in which electronic access to the DNA data bank sample tracking system 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.

Notwithstanding any other provision of law, upon motion by the attorney for the Commonwealth and based on an allegation that a person under the court's supervision has information that could assist law enforcement with the interdiction or prosecution of the distribution of controlled substances, as defined

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59 *in § 18.2-250, the court shall permit such person to (i) serve as a confidential informant and (ii) possess*
60 *controlled substances in furtherance of his duties as a confidential informant while under the*
61 *supervision of law-enforcement officers. The fact that such person is on probation, under good behavior*
62 *obligations, or under any other form of court supervision shall not bar or be grounds for the denial of*
63 *any such motion from the Commonwealth. Such possession of controlled substances by the probationer*
64 *shall be for the limited purpose of interdicting the trafficking and distribution of controlled substances.*
65 *The probationer shall not be subject to prosecution under Article 1 (§ 18.2-247 et seq.), 1.1*
66 *(§ 18.2-265.1 et seq.), 1.2 (§ 18.2-265.6 et seq.), or 1.3 (§ 18.2-265.19 et seq.) of Chapter 7 of Title 18.2*
67 *while performing his duties as a confidential informant under the supervision of law-enforcement*
68 *officers.*

69 Notwithstanding any other provision of law, in any case where a defendant is convicted of a
70 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,
71 committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order
72 that the period of suspension shall be for a length of time at least equal to the statutory maximum
73 period for which the defendant might originally have been sentenced to be imprisoned, and the
74 defendant shall be placed on probation for that period of suspension subject to revocation by the court.
75 The conditions of probation may include such conditions as the court shall determine, including active
76 supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61,
77 subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least
78 three years of the probation include active supervision of the defendant under a postrelease supervision
79 program operated by the Department of Corrections, and for at least three years of such active
80 supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global
81 Positioning System) tracking device, or other similar device.

82 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any
83 time before the sentence has been completely served, suspend the unserved portion of any such sentence,
84 place the person on probation in accordance with the provisions of this section, or otherwise modify the
85 sentence imposed.

86 If a person has been sentenced for a felony to the Department of Corrections (the Department), the
87 court that heard the case, if it appears compatible with the public interest and there are circumstances in
88 mitigation of the offense, may, at any time before the person is transferred to the Department, or within
89 60 days of such transfer, suspend or otherwise modify the unserved portion of such a sentence. The
90 court may place the person on probation in accordance with the provisions of this section.