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SENATE BILL NO. 427
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Senator Deeds
 on February 13, 2024)

(Patron Prior to Substitute—Senator Deeds)

A *BILL* to amend the Code of Virginia by adding a section numbered 19.2-303.03, relating to petition for modification of a sentence; eligibility; procedures.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-303.03 as follows:

§ 19.2-303.03. Petition for modification of a sentence; eligibility; procedures.

A. Notwithstanding any other provision of law or rule of court, upon petition of a person who remains incarcerated in a state or local correctional facility or secure facility, as defined in § 16.1-228, serving the sentence for any conviction or for a combination of any convictions of (i) first degree murder or a second or subsequent conviction of second degree murder in violation of Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; (ii) (a) rape in violation of § 18.2-61; (b) forcible sodomy in violation of § 18.2-67.1; (c) object sexual penetration in violation of § 18.2-67.2; (d) aggravated sexual battery in violation of § 18.2-67.3; (e) an attempt to commit a violation of clause (a), (b), (c), or (d); or (f) carnal knowledge in violation of § 18.2-63, 18.2-64.1, or 18.2-64.2; (iii) human trafficking in violation of § 18.2-355; (iv) an act of terrorism as described in § 18.2-46.4; (v) possession, manufacture, distribution, etc., of a weapon of terrorism or hoax device in violation of § 18.2-46.6, except for a violation of subsection B of § 18.2-46.6; (vi) producing or filming child pornography in violation of § 18.2-374.1; (vii) lynching in violation of § 18.2-40; (viii) death by mob in violation of § 18.2-45; (ix) committing, conspiring, aiding, or abetting acts of terrorism in violation of § 18.2-46.5; or (x) treason in violation of § 18.2-481, the circuit court that entered the original judgment or order may grant a hearing to determine whether to modify such person's sentence if such person:

1. Has served at least 25 years of his sentence; and
 2. Has not (i) filed a petition for modification of a sentence pursuant to this section within the preceding three years, (ii) had a sentence modified pursuant to this section within the preceding five years, or (iii) filed more than two petitions for modification of a sentence pursuant to this section.

B. Notwithstanding any other provision of law or rule of court, upon petition of a person who remains incarcerated in a state or local correctional facility or secure facility, as defined in § 16.1-228, serving the sentence for any conviction or for a combination of any convictions of (i) a first and single offense of second degree murder as described in § 18.2-32; (ii) malicious wounding in violation of § 18.2-51; (iii) entering a dwelling with the intent to commit rape, murder, or arson in violation of § 18.2-77, 18.2-79, or 18.2-80; (iv) shooting, stabbing, or maiming by mob in violation of § 18.2-41; (v) shooting, stabbing, etc., with intent to maim or kill in violation of § 18.2-51; (vi) malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical services personnel in violation of § 18.2-51.1; (vii) burning or destroying a meeting house, etc., in violation of § 18.2-79; or (viii) reproduction, distribution, solicitation, and facilitation of child pornography in violation of subsection C or D of § 18.2-374.1:1, the circuit court that entered the original judgment or order may grant a hearing to determine whether to modify such person's sentence if such person:

1. Has served at least 20 years of his sentence; and
 2. Has not (i) filed a petition for modification of a sentence pursuant to this section within the preceding three years, (ii) had a sentence modified pursuant to this section within the preceding five years, or (iii) filed more than two petitions for modification of a sentence pursuant to this section.

C. Notwithstanding any other provision of law or rule of court, upon petition of a person who remains incarcerated in a state or local correctional facility or secure facility, as defined in § 16.1-228, serving the sentence for any conviction or for a combination of any convictions not enumerated in subsection A or B, except for a conviction of a Class 1 felony, the circuit court that entered the original judgment or order may grant a hearing to determine whether to modify such person's sentence if such person:

1. Has served at least 15 years of his sentence; and
 2. Has not (i) filed a petition for modification of a sentence pursuant to this section within the preceding three years, (ii) had a sentence modified pursuant to this section within the preceding five years, or (iii) filed more than two petitions for modification of a sentence pursuant to this section.

D. The petition for modification of a sentence shall be filed with the circuit court that entered the original judgment or order on a form provided by the Supreme Court of Virginia by the petitioner or his counsel. Such petition shall allege with specificity all of the following: (i) the petitioner's full name and date of birth; (ii) the offense for which the petitioner was convicted; (iii) the date on which such

60 offense was alleged to have been committed; (iv) the date on which the petitioner was sentenced for
61 such offense; (v) whether the petitioner remains incarcerated in a state or local correctional facility or
62 secure facility serving the sentence he is seeking to modify, and if so, which facility; (vi) whether the
63 petitioner has previously filed any other petition in accordance with this section; and (vii) the reason
64 the petitioner is requesting a sentence modification and any information in support thereof. If the
65 petitioner fails to submit a completed form, the circuit court may allow the petitioner to amend the
66 petition to correct any deficiency. Failure to include all information pursuant to this subsection shall not
67 be grounds for dismissal of the petition.

68 E. The Commonwealth shall be made party to the proceeding. The petitioner shall provide a copy of
69 the petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth of
70 the city or county in which the petition is filed.

71 F. Upon receipt, the court shall conduct a preliminary review of the petition. The court may
72 summarily dismiss the petition if the petitioner fails to state good cause to modify his sentence. The
73 court shall provide a written explanation of the reason for the dismissal as prescribed in subsection K.

74 If the court believes good cause exists to grant the petition, the court shall notify the attorney for the
75 Commonwealth of the city or county in which the petition is filed and order such attorney for the
76 Commonwealth to file an answer to the petition indicating his position within 60 days of receipt of such
77 order, which may be extended for good cause shown, and a copy of which shall be provided to the
78 petitioner or his counsel by delivery or by first-class mail, postage prepaid. Such answer shall address
79 the factors listed in subsection J. If the attorney for the Commonwealth objects to hearing the petition
80 or does not respond to a petition, the court shall dismiss such petition. No attorney for the
81 Commonwealth shall be required to respond to a petition except upon an order of the court.

82 If the attorney for the Commonwealth does not object, the court shall direct the attorney for the
83 Commonwealth to make reasonable efforts to notify any victim of the crime, as defined in § 19.2-11.01,
84 that a petition has been filed and request such victim's agreement to hear the petition. If the victim does
85 not agree to such request or does not respond to a petition, the court shall dismiss the petition. No
86 victim shall be required to respond to a petition.

87 If the crime that such petitioner is convicted of and incarcerated for does not have an identifiable
88 victim, a response from the attorney for the Commonwealth shall be sufficient to proceed under this
89 section.

90 No agreement by the attorney for the Commonwealth or the victim to hear the petition shall be
91 construed to be an agreement to modify a sentence in any future hearing.

92 G. If the attorney for the Commonwealth and the victim agree to hearing the petition, the court shall
93 conduct a hearing on the petition within 90 days of the filing of the petition. The court may continue the
94 hearing to a date more than 90 days after the filing of the petition with the agreement of the petitioner
95 and the attorney for the Commonwealth or upon motion of the court for good cause. The attorney for
96 the Commonwealth shall make reasonable efforts to notify any victim, as defined in § 19.2-11.01, of
97 such hearing and of the victim's right to testify, subject to the provisions of § 19.2-295.3, at the hearing
98 and to submit a Victim Impact Statement, subject to the provisions of § 19.2-299.1, which may include
99 information of any changes related to the factors outlined in § 19.2-299.1 since the petitioner's original
100 sentencing. If the attorney for the Commonwealth is unable to contact the victim, he shall file a written
101 pleading outlining the efforts made to notify the victim. Prior to the hearing on the petition, the court
102 shall determine whether such efforts made are reasonable.

103 H. The hearing on the petition shall be conducted by the judge who entered the original judgment or
104 order unless such judge is no longer available, in which case the chief judge of the circuit court shall
105 assign the petition to another judge of that circuit court. The petitioner may appear by use of two-way
106 electronic video and audio communication that meets the standards set forth in subsection B of
107 § 19.2-3.1.

108 I. At such hearing, the petitioner and the attorney for the Commonwealth may submit additional
109 evidence, including witness testimony and documentary evidence. Subject to the provisions of
110 § 19.2-295.3, the court shall permit any victim to testify at the hearing, and subject to the provisions of
111 § 19.2-299.1, any victim may submit a Victim Impact Statement to be considered by the court at the
112 hearing.

113 J. At such hearing, the court may dismiss the petition or, upon good cause shown by the petitioner at
114 any time before the petitioner's sentence has been completely served, (i) suspend the unserved portion of
115 any such sentence or run the unserved portion of any sentence concurrently with another sentence; (ii)
116 place the petitioner on probation for such time as the court shall determine; or (iii) otherwise modify
117 the sentence imposed, except that no modification of any term of confinement shall exceed the original
118 term of confinement imposed by the court. The court may modify a sentence pursuant to this section
119 regardless of whether any mandatory minimum term of confinement or other minimum term of
120 incarceration is otherwise required by law.

121 When determining whether there is good cause to modify the petitioner's sentence, the court shall

consider the following factors:

1. The age of the petitioner at the time of the offense and any relevant research presented at the hearing regarding development of the youth brain, the amount of time that has passed since the date of the offense, and evidence of the maturity of the petitioner since the date of the offense;

2. The age of the petitioner at the time the petition was filed and any relevant research presented at the hearing regarding the decline in criminal behavior as individuals grow older;

3. The history and characteristics of the petitioner at the time of the hearing, including rehabilitation demonstrated by the petitioner, the petitioner's disciplinary record while incarcerated, and the petitioner's efforts to participate in any educational or therapeutic programs;

4. Whether the petitioner was the victim of domestic or sexual abuse at the time of the offense and whether such abuse was related to the petitioner's commission of the offense, and any treatment or therapy the petitioner has received since the time of his sentencing;

5. Any report from a physical, mental, or psychiatric examination of the petitioner conducted by a licensed health care professional that has occurred after the initial sentencing hearing and any treatment the petitioner has received while incarcerated;

6. Any testimony or Victim Impact Statement presented by any victim of the offense or by a family member of the victim if such victim is deceased;

7. Any evidence that the petitioner was sentenced above the recommendation of the original discretionary sentencing guidelines;

8. Compliance with the petitioner's case plan, as described by the Department of Corrections operating procedures, during the five years preceding the filing of the petition;

9. Any evidence of the petitioner's acts of service, leadership, or mentorship he engaged in or developed independently while incarcerated;

10. Any information regarding the petitioner's reentry plan, including his prospective residence and any employment plans;

11. Any information related to the petitioner's support from community leaders, faith leaders, or other stakeholders as deemed appropriate by the court;

12. Whether release of the petitioner presents a danger to any other person or to the public; and

13. Any other information the court determines to be relevant to whether the petitioner has changed since the time of his original sentencing or relevant to whether there is good cause to modify his sentence.

K. Within 30 days of the hearing or dismissal, or as soon as practicable, the court shall file with the record of the case a written explanation for the grant or denial of the petition and shall provide a copy of such written explanation to the petitioner and to the attorney for the Commonwealth. The written explanation shall address each of the factors in subsection J and indicate the weight given to each factor.

L. Following the entry of an order to modify a sentence pursuant to this section, within five days the clerk of the circuit court shall cause a copy of such order to be forwarded to the Virginia Criminal Sentencing Commission, the Department of State Police, and the state or local correctional facility or secure facility, as defined in § 16.1-228, where the petitioner is incarcerated. When calculating a sentence modified pursuant to this section, the petitioner shall receive credit for any time served in any local or state correctional facility or secure facility.

M. The decision of a circuit court to dismiss a petition or to modify a sentence pursuant to this section shall not form the basis for relief in any habeas corpus or appellate proceeding, unless such decision was contrary to law. Filing a petition under this section shall not be construed to abridge, toll, or modify any existing remedy, including filing a writ of habeas corpus, a writ of actual innocence, or any other form of relief.

N. The attorney for the Commonwealth shall not require that a person waive his right to petition for modification of a sentence pursuant to this section as a condition of a plea agreement. Notwithstanding the terms of any plea agreement that attempts to limit the filing of a petition for modification of a sentence pursuant to this section, a court may modify such sentence, provided that the other requirements of this section are met.

O. Whenever a person becomes eligible to petition for modification of a sentence pursuant to this section, the Department of Corrections shall notify, within 30 days of such person becoming eligible, such person of his eligibility and send, along with a copy of this section, the form for the fillable petition provided by the Supreme Court of Virginia, and all information necessary to complete such form. The notification shall be provided to each eligible individual in his primary language. Upon request of the petitioner or counsel for the petitioner, the Department of Corrections shall provide any records, electronic and paper, associated with the petitioner, without cost, including sentencing orders, program enrollment and completion, security status, case plan documentation, risk assessment data and evaluation, medical records, and any other relevant records. A copy of any such records requested and

183 *provided shall also be provided to the court and the attorney for the Commonwealth.*
184 *P. No fee shall be charged for filing a petition under subsection D.*