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## HOUSE BILL NO. 976

Offered January 22, 1996

*A BILL to amend and reenact §§ 17-233, 17-235 and 19.2-298.01 of the Code of Virginia, relating to sentencing guidelines; use by jury.*

\_\_\_\_\_  
Patron—Robinson

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 17-233, 17-235 and 19.2-298.01 of the Code of Virginia are amended and reenacted as follows:**

§ 17-233. Purpose.

The General Assembly, to ensure the imposition of appropriate and just criminal penalties, and to make the most efficient use of correctional resources, especially for the effective incapacitation of violent criminal offenders, has determined that it is in the best interest of the Commonwealth to develop, implement, and revise ~~discretionary~~ sentencing guidelines. The purposes of the Commission established under this chapter are to assist the judiciary in the imposition of sentences by establishing a system of ~~discretionary~~ guidelines and to establish a ~~discretionary~~ sentencing guidelines system which emphasizes accountability of the offender and of the criminal justice system to the citizens of the Commonwealth.

The Commission shall develop ~~discretionary~~ sentencing guidelines to achieve the goals of certainty, consistency, and adequacy of punishment with due regard to the seriousness of the offense, the dangerousness of the offender, deterrence of individuals from committing criminal offenses and the use of alternative sanctions, where appropriate.

§ 17-235. Powers and duties.

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.

3. Prepare, periodically update, and distribute a form for the use of sentencing courts *and juries* 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 1, 2 or 3 of subsection A of § 17-237 or (ii) subsection C of § 17-237 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 twenty-five percent of such offenders in one of the alternative sanctions listed in subdivision 4. If the Commission so determines that achieving the twenty-five 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. 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. 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. Study felony statutes in the context of judge-sentencing and jury-sentencing patterns as they evolve after January 1, 1995, and make recommendations for the revision of general criminal offense statutes to provide more specific offense definitions and more narrowly prescribed ranges of punishment.

10. Report upon its work and recommendations annually on or before December 1 to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia.

11. Perform such other functions as may be otherwise required by law or as may be necessary to carry out the provisions of this chapter.

§ 17-238. Sentencing guidelines modifications; effective date.

After adoption of the initial guidelines, any modification to the ~~discretionary~~ sentencing guidelines adopted by the Commission shall be contained in the annual report required under § 17-235 and shall, unless otherwise provided by law, become effective on the next following July 1. *On and after July 1, 1996, use of the sentencing guidelines developed by the Commission shall be required.*

§ 19.2-298.01. Use of sentencing guidelines.

A. In all felony cases, other than Class 1 felonies, the court ~~or jury ascertaining punishment~~ shall (i) have presented to it the appropriate ~~discretionary~~ sentencing guidelines worksheets and (ii) ~~review and consider the suitability of the applicable discretionary sentencing guidelines~~ established pursuant to Chapter 11 (§ 17-232 et seq.) of Title 17. ~~Before imposing sentence, the~~ *The court shall state for the record that such review and consideration have been accomplished and shall make the completed* worksheets a part of the record of the case. ~~In cases tried by a jury, the jury shall not be presented any information regarding sentencing guidelines.~~

B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence which is either greater or less than that indicated by the ~~discretionary~~ sentencing guidelines, the court shall file with the record of the case a written explanation of such departure.

C. In felony cases, other than Class 1 felonies, tried by a jury and in felony cases tried by the court without a jury upon a plea of not guilty, the court shall direct a probation officer of such court to prepare the ~~discretionary~~ sentencing guidelines worksheets. In felony cases tried upon a plea of guilty, including cases which are the subject of a plea agreement, the court may direct a probation officer of such court to prepare the ~~discretionary~~ sentencing guidelines worksheets, or, with the concurrence of the accused, the court and the attorney for the Commonwealth, the worksheets may be prepared by the attorney for the Commonwealth.

D. Except as provided in subsection E, ~~discretionary~~ sentencing guidelines worksheets prepared pursuant to this section shall be subject to the same distribution as presentence investigation reports prepared pursuant to subsection A of § 19.2-299.

E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, a copy of the ~~discretionary~~ sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days.

F. The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis of any other post-conviction relief.

G. The provisions of this section shall apply only to felony cases in which the offense is committed on or after January 1, 1995, and for which there are ~~discretionary~~ sentencing guidelines.