

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 17.1-803 and 19.2-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-306.2, relating to probation violation guidelines; use of sentencing revocation report and discretionary sentencing guidelines in revocation proceedings.*

[H 1318]

Approved

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

**1. That §§ 17.1-803 and 19.2-306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-306.2 as follows:**

**§ 17.1-803. 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 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 § 17.1-805 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. Prepare, periodically update, and distribute a form for recording the reasons for, and outcomes of, revocation hearings conducted in circuit courts pursuant to § 19.2-306.

8. Develop, maintain, and modify as may be deemed necessary a system of statewide discretionary sentencing guidelines for use in hearings conducted in circuit courts pursuant to § 19.2-306 in which the defendant is cited for violation of a condition or conditions of supervised probation imposed as a result of a felony conviction. Such guidelines shall take into account historical data for sentences imposed in such cases and such other factors as may be deemed relevant to sentencing.

9. 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.

10. 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.

11. 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.

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~~10-~~ 12. 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. Such report shall include any modifications to the discretionary sentencing guidelines adopted by the Commission pursuant to subdivision 1 and shall be accompanied by a statement of the reasons for those modifications.

~~11-~~ 13. Perform such other functions as may be otherwise required by law or as may be necessary to carry out the provisions of this chapter.

**§ 19.2-306. Revocation of suspension of sentence and probation.**

A. ~~In~~ Subject to the provisions of § 19.2-306.2, in any case in which the court has suspended the execution or imposition of sentence, the court may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time within the probation period, or within the period of suspension fixed by the court. If neither a probation period nor a period of suspension was fixed by the court, then the court may revoke the suspension for any cause the court deems sufficient that occurred within the maximum period for which the defendant might originally have been sentenced to be imprisoned.

B. The court may not conduct a hearing to revoke the suspension of sentence unless the court issues process to notify the accused or to compel his appearance before the court within 90 days of receiving notice of the alleged violation or within one year after the expiration of the period of probation or the period of suspension, whichever is sooner, or, in the case of a failure to pay restitution, within three years after such expiration. If neither a probation period nor a period of suspension was fixed by the court, then the court shall issue process within six months after the expiration of the maximum period for which the defendant might originally have been sentenced to be incarcerated. Such notice and service of process may be waived by the defendant, in which case the court may proceed to determine whether the defendant has violated the conditions of suspension.

C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of suspension, then the court may revoke the suspension and impose a sentence in accordance with the provisions of § 19.2-306.1. The court may again suspend all or any part of this sentence for a period up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, less any time already served, and may place the defendant upon terms and conditions or probation. The court shall measure the period of any suspension of sentence from the date of the entry of the original sentencing order. However, if a court finds that a defendant has absconded from the jurisdiction of the court, the court may extend the period of probation or suspended sentence for a period not to exceed the length of time that such defendant absconded.

D. If any court has, after hearing, found no cause to impose a sentence that might have been originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which the hearing was held, shall be barred.

E. Nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit court having criminal jurisdiction from a judgment or order revoking any suspended sentence.

**§ 19.2-306.2. Use of sentencing revocation report and discretionary sentencing guidelines in cases of revocation of suspension of sentence and probation.**

A. In any proceeding conducted pursuant to § 19.2-306 for revocation of suspension of sentence or probation imposed as a result of a felony conviction, the circuit court shall have presented to it a sentencing revocation report prepared on a form designated by the Virginia Criminal Sentencing Commission. Such form shall indicate the nature of the alleged violation or violations and, if the defendant is subject to supervised probation, the condition or conditions of probation that the defendant has allegedly violated. The sentencing revocation report shall be prepared by the supervising probation agency that initiated the request for the revocation hearing. If the defendant is not under active probation supervision or the supervising probation agency did not initiate the request for the revocation hearing, the sentencing revocation report shall be completed by an attorney for the Commonwealth.

B. For every proceeding conducted pursuant to § 19.2-306 in which the defendant is cited for violating a condition or conditions of supervised probation imposed as a result of a felony conviction and such person is under the supervision of a state probation and parole officer, the court shall have presented to it the applicable discretionary probation violation guidelines pursuant to § 17.1-803.

1. The applicable discretionary probation violation guidelines shall be prepared by a state probation and parole officer on a form designated by the Virginia Criminal Sentencing Commission. If a party other than a probation and parole officer initiated the request for the revocation hearing, no probation violation guidelines are prepared and only the sentencing revocation report required by subsection A shall be submitted to the court.

2. The court shall review and consider the suitability of the applicable discretionary probation

violation guidelines. Before imposing sentence, 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.

3. In any proceeding in which the court imposes a sentence that is either greater than or less than that indicated by the discretionary probation violation guidelines, the court shall provide a written explanation of such departure to be filed with the record of the case.

C. Within 30 days following the entry of a final order in a revocation proceeding, the clerk of the circuit court shall prepare and send to the Virginia Criminal Sentencing Commission a copy or copies of (i) the final order, (ii) the original sentencing revocation report, (iii) any applicable probation violation guideline worksheets prepared for such proceeding, and (iv) any written explanation regarding a departure from the probation violation guidelines pursuant to subsection B.

D. Failure to follow the provisions of this section or failure to follow these provisions in the prescribed manner shall not be reviewable on appeal and shall not be used for the basis of any other post-proceeding relief.