

HOUSE BILL NO. 2038

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Scott)

A BILL to amend and reenact §§ 19.2-303, 19.2-303.1, and 19.2-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-306.1, relating to probation, revocation, and suspension of sentence; limitations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-303, 19.2-303.1, 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 19.2-306.1 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 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

27 judge, after convicting the defendant of any offense for which a report to the Central Criminal Records
28 Exchange is required in accordance with subsection A of § 19.2-390, shall determine whether a copy of
29 the defendant's fingerprints or fingerprint identification information has been provided by a law-
30 enforcement officer to the clerk of court for each such offense. In any case where fingerprints or fingerprint
31 identification information has not been provided by a law-enforcement officer to the clerk of court, the
32 judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition
33 of probation or of the suspension of the imposition or execution of any sentence for such offense. Such
34 fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of
35 subsection D of § 19.2-390.

36 In those courts having electronic access to the Local Inmate Data System (LIDS) within the
37 courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether
38 a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank
39 maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter
40 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored
41 in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom,
42 the court shall order that the defendant appear within 30 days before the sheriff or probation officer and
43 allow the sheriff or probation officer to take the required sample. The order shall also require that, if the
44 defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the
45 date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure
46 to appear and provide the required sample.

47 After conviction and upon sentencing of an active participant or member of a criminal street gang,
48 the court may, as a condition for suspending the imposition of the sentence in whole or in part or for
49 placing the accused on probation, place reasonable restrictions on those persons with whom the accused
50 may have contact. Such restrictions may include prohibiting the accused from having contact with anyone
51 whom he knows to be a member of a criminal street gang, except that contact with a family or household
52 member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

53 ~~In~~ Notwithstanding any other provision of law, in any case where a defendant is convicted of a
54 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,
55 committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order
56 that the period of suspension shall be for a length of time at least equal to the statutory maximum period
57 for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall
58 be placed on probation for that period of suspension subject to revocation by the court. The conditions of
59 probation may include such conditions as the court shall determine, including active supervision. Where
60 the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-
61 67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation
62 include active supervision of the defendant under a postrelease supervision program operated by the
63 Department of Corrections, and for at least three years of such active supervision, the defendant shall be
64 subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other
65 similar device.

66 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any
67 time before the sentence has been completely served, suspend the unserved portion of any such sentence,
68 place the person on probation for ~~such time as the court shall determine~~ up to the statutory maximum
69 period for which the defendant might originally have been sentenced to be imprisoned, or otherwise
70 modify the sentence imposed. Any period of supervised probation shall not exceed five years from the
71 release of the defendant from any active period of incarceration.

72 If a person has been sentenced for a felony to the Department of Corrections but has not actually
73 been transferred to a receiving unit of the Department, the court which heard the case, if it appears
74 compatible with the public interest and there are circumstances in mitigation of the offense, may, at any
75 time before the person is transferred to the Department, suspend or otherwise modify the unserved portion
76 of such a sentence. The court may place the person on probation for ~~such time as the court shall determine~~
77 up to the statutory maximum period for which the defendant might originally have been sentenced to be
78 imprisoned. Any period of supervised probation shall not exceed five years from the release of the
79 defendant from any active period of incarceration.

80 **§ 19.2-303.1. Fixing period of suspension of sentence.**

81 In any case where a court suspends the imposition or execution of a sentence, it may fix the period
82 of suspension for ~~a reasonable time, having due regard to the gravity of the offense, without regard~~ up to
83 the statutory maximum period for which the defendant might originally have been sentenced to be
84 imprisoned.

85 **§ 19.2-306. Revocation of suspension of sentence and probation.**

86 A. In any case in which the court has suspended the execution or imposition of sentence, the court
87 may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time
88 within the probation period, or within the period of suspension fixed by the court. If neither a probation
89 period nor a period of suspension was fixed by the court, then the court may revoke the suspension for
90 any cause the court deems sufficient that occurred within the maximum period for which the defendant
91 might originally have been sentenced to be imprisoned.

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

101 C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms
102 of suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke
103 the suspension, and the court may ~~pronounce whatever sentence might have been originally imposed~~
104 impose a sentence in accordance with the provisions of § 19.2-306.1 or (ii) if the court originally
105 suspended the execution of the sentence, the court shall revoke the suspension and the original sentence
106 shall be in full force and effect. The court may again suspend all or any part of this sentence for a period

107 up to the statutory maximum period for which the defendant might originally have been sentenced to be
108 imprisoned, less any time already served, and may place the defendant upon terms and conditions or
109 probation. The court shall measure the period of any suspension of sentence from the date of the entry of
110 the original sentencing order.

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

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

118 **§ 19.2-306.1. Limitation on sentence upon revocation of suspension of sentence; exceptions.**

119 A. For the purposes of this section, "technical violation" means any violation of the terms and
120 conditions of a suspended sentence or probation other than a violation based on a new conviction for a
121 criminal offense. Multiple technical violations arising from a single course of conduct or a single incident
122 or considered at the same revocation hearing shall not be considered separate technical violations for the
123 purposes of sentencing pursuant to this section.

124 B. If the court finds the basis of a violation of the terms and conditions of a suspended sentence or
125 probation is that the defendant was convicted of a criminal offense, then the court may pronounce
126 whatever sentence might have been originally imposed.

127 C. The court shall not impose a sentence of a term of incarceration upon a first technical violation
128 of the terms and conditions of a suspended sentence or probation, and there shall be a presumption against
129 imposing a sentence of a term of incarceration for any second or subsequent technical violation of the
130 terms and conditions of a suspended sentence or probation. However, if the court finds, by a
131 preponderance of the evidence, that the defendant committed a second or subsequent technical violation
132 of the terms and conditions of his suspended sentence or probation and he cannot be safely diverted from
133 incarceration through less restrictive means, the court may impose (i) not more than 14 days of

134 incarceration for a second technical violation and (ii) whatever sentence might have been originally
135 imposed for a third or subsequent technical violation.

136 D. The limitations on sentencing in this section shall not apply to the extent that an additional term
137 of incarceration is necessary to allow a defendant to be evaluated for or to participate in a court-ordered
138 drug, alcohol, or mental health treatment program. In such case, the court shall order the shortest term of
139 incarceration possible to achieve the required evaluation or participation.

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