

SENATE BILL NO. 137

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Senator Edwards)

A BILL to amend and reenact § 19.2-298.01 of the Code of Virginia, relating to discretionary sentencing guidelines; written explanation; appeal.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-298.01 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-298.01. Use of discretionary sentencing guidelines.

A. In all felony cases, other than Class 1 felonies, the court 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 8 (§ 17.1-800 et seq.) of Title 17.1. 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 and open for inspection. 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~~ that 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. The written explanation shall adequately explain the sentence imposed to promote fair sentencing.

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 shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the accused, the

27 court and the attorney for the Commonwealth, the worksheets shall be prepared by the attorney for the
28 Commonwealth.

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

32 E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the
33 circuit court in which the case was tried shall cause a copy of such order or orders, the original of the
34 discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure
35 explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing
36 Commission within five days. Similarly, the statement required by §§ 19.2-295 and 19.2-303 and
37 regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the Virginia
38 Criminal Sentencing Commission.

39 F. A court's ruling on a defendant's objection to the calculation of the discretionary sentencing
40 guidelines is reviewable upon appeal. The failure to follow any or all of the provisions of this section or
41 the failure to follow any or all of the provisions of this section in the prescribed manner ~~shall not~~, including
42 the failure to provide a written explanation that adequately explains the sentence imposed, shall be
43 reviewable on appeal or may be the basis of any other post-conviction relief. The failure to provide a
44 written explanation that adequately explains the sentence imposed is reversible error.

45 G. The provisions of this section shall apply only to felony cases in which the offense is committed
46 on or after January 1, 1995, and for which there are discretionary sentencing guidelines. For purposes of
47 the discretionary sentencing guidelines only, a person sentenced to a community corrections alternative
48 program pursuant to § 19.2-316.4 shall be deemed to be sentenced to a term of incarceration.

49 **2. That the provisions of this act shall apply only to sentencing hearings conducted and such**
50 **sentences imposed on or after July 1, 2022.**

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