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SENATE BILL NO. 427

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on February 5, 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) a Class 1 felony; (ii) aggravated murder in violation of § 18.2-31 or 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; (iii) where the victim is a minor, (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; (iv) human trafficking in violation of § 18.2-355; (v) an act of terrorism as described in § 18.2-46.4; (vi) 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; (vii) producing or filming child pornography in violation of § 18.2-374.1; (viii) lynching in violation of § 18.2-40; (ix) death by mob in violation of § 18.2-45; (x) committing, conspiring, aiding, or abetting acts of terrorism in violation of § 18.2-46.5; or (xi) treason in violation of § 18.2-481, the circuit court that entered the original judgment or order shall 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) where the victim was an adult, a felony offense of (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, or (d) aggravated sexual battery in violation of § 18.2-67.3; (iii) malicious wounding in violation of § 18.2-51; (iv) 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; (v) shooting, stabbing, or maiming by mob in violation of § 18.2-41; (vi) shooting, stabbing, etc., with intent to maim or kill in violation of § 18.2-51; (vii) malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical services personnel in violation of § 18.2-51.1; (viii) burning or destroying a meeting house, etc., in violation of § 18.2-79; or (ix) 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 shall 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, 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 circuit court shall have authority to conduct hearings on and dismiss without prejudice petitions for the modification of a sentence pursuant to this section. No petition dismissed without prejudice shall be counted as a petition filed for the purposes of clause (iii) of subdivisions A 2, B 2, and C 2. The judge may

60 *make an initial determination on the merits and dismiss the petition in chambers without prejudice within 60*
61 *days of receipt of the petition. If the judge determines that the petition lacks merit, no hearing shall be*
62 *conducted and no notification shall be sent to the local attorney for the Commonwealth or victim, as defined*
63 *in § 19.2-11.01. The judge shall file a written explanation of the reason for the dismissal as prescribed in*
64 *subsection L.*

65 *E. Any person eligible for modification of a sentence under subsection A, B, or C may file a petition for*
66 *the assistance of counsel and a statement of indigency with the court on a form provided by the Supreme*
67 *Court of Virginia. The court may summarily dismiss the petition if the person is not eligible for modification*
68 *of a sentence based on the criteria set forth in subsection A, B, or C. If the petition is not summarily*
69 *dismissed and the court finds that the person is entitled to representation by counsel subject to the provisions*
70 *of Article 3 (§ 19.2-157 et seq.) of Chapter 10, the court shall appoint counsel to represent the petitioner. An*
71 *attorney appointed to represent a petitioner pursuant to this subsection shall be compensated at the same*
72 *rate as an attorney providing representation on a felony case pursuant to § 19.2-163.*

73 *F. The petition for modification of a sentence shall be filed with the circuit court that entered the original*
74 *judgment or order on a form provided by the Supreme Court of Virginia by the petitioner or by counsel for*
75 *the petitioner. Such petition shall allege with specificity all of the following: (i) the petitioner's full name and*
76 *date of birth; (ii) the offense for which the petitioner was convicted; (iii) the date on which such offense was*
77 *alleged to have been committed; (iv) the date on which the petitioner was sentenced for such offense; (v)*
78 *whether the petitioner remains incarcerated in a state or local correctional facility or secure facility serving*
79 *the sentence he seeks to modify and, if so, which facility; (vi) whether the petitioner has previously filed any*
80 *other petition in accordance with this section; and (vii) the reason the petitioner is requesting a sentence*
81 *modification and any information in support thereof. If the petitioner fails to submit a completed form, the*
82 *circuit court may allow the petitioner to amend the petition to correct any deficiency. Failure to include all*
83 *information pursuant to this subsection shall not be grounds for dismissal of the petition.*

84 *G. The Commonwealth shall be made party to the proceeding. The petitioner shall provide a copy of the*
85 *petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth of the city*
86 *or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer*
87 *to the petition indicating his position within 60 days after it is received from the petitioner, a copy of which*
88 *shall be provided to the petitioner or counsel for the petitioner by delivery or by first-class mail, postage*
89 *prepaid. The petitioner may reply to any objection or answer filed by the attorney for the Commonwealth*
90 *within 30 days after receipt of such objection or answer.*

91 *H. The court shall conduct a hearing on the petition within 90 days of the filing of the petition. The court*
92 *may continue the hearing to a date more than 90 days after the filing of the petition with the agreement of the*
93 *petitioner and the attorney for the Commonwealth or upon motion of the court for good cause. The attorney*
94 *for the Commonwealth shall make reasonable efforts to notify any victim, as defined in § 19.2-11.01, of such*
95 *hearing and of the victim's right to testify, subject to the provisions of § 19.2-295.3, at the hearing and to*
96 *submit a Victim Impact Statement, subject to the provisions of § 19.2-299.1, which may include information*
97 *of any changes related to the factors outlined in § 19.2-299.1 since the original sentencing. If the attorney for*
98 *the Commonwealth is unable to contact the victim, he shall file a written pleading outlining the efforts made*
99 *to notify the victim. Prior to the hearing on the petition, the court shall determine whether such efforts are*
100 *reasonable. Failure of the attorney for the Commonwealth to make reasonable efforts to notify any victim*
101 *shall not preclude the court from considering the petition.*

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

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

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

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

121 *and evidence of the maturity of the petitioner since the date of the offense;*
 122 *2. The age of the petitioner at the time the petition was filed and relevant research presented at the*
 123 *hearing regarding the decline in criminal behavior as individuals grow older;*
 124 *3. The history and characteristics of the petitioner at the time of the hearing, including rehabilitation*
 125 *demonstrated by the petitioner, the petitioner's disciplinary record while incarcerated, and the petitioner's*
 126 *efforts to participate in any educational or therapeutic programs;*
 127 *4. Whether the petitioner was the victim of domestic or sexual abuse at the time of the offense and whether*
 128 *such abuse was related to the petitioner's commission of the offense and any treatment or therapy received*
 129 *since the time of sentencing;*
 130 *5. Any report from a physical, mental, or psychiatric examination of the petitioner conducted by a*
 131 *licensed health care professional that has occurred after the initial sentencing hearing and any treatment*
 132 *received by the petitioner while incarcerated;*
 133 *6. Any testimony or Victim Impact Statement presented by any victim of the offense or by a family member*
 134 *of the victim if the victim is deceased;*
 135 *7. Any evidence concerning whether the petitioner's sentence was enhanced because the petitioner*
 136 *exercised his constitutional right to a trial or evidence that the petitioner was sentenced above the*
 137 *recommendation of the original discretionary sentencing guidelines;*
 138 *8. Compliance with the petitioner's case plan, as described by the Department of Corrections operating*
 139 *procedures, during the five years preceding the filing of the petition;*
 140 *9. Any evidence of the petitioner's acts of service, leadership, or mentorship engaged in or developed*
 141 *independently by the petitioner;*
 142 *10. Any information regarding the petitioner's home and employment plans;*
 143 *11. Any information related to support from community leaders, faith leaders, or other stakeholders as*
 144 *deemed appropriate by the court; and*
 145 *12. Any other information the court determines to be relevant to whether the petitioner has changed since*
 146 *the time of the original sentencing or relevant to whether there is good cause for modification of the*
 147 *petitioner's sentence.*
 148 *L. Within 30 days of the hearing or dismissal, or as soon as practicable, the court shall file with the*
 149 *record of the case a written explanation for the grant or denial of the petition and shall provide a copy of*
 150 *such written explanation to the petitioner and to the attorney for the Commonwealth. The written explanation*
 151 *shall address each of the factors in subsection K and indicate the weight given to each factor.*
 152 *M. Following the entry of an order to modify a sentence pursuant to this section, within five days the clerk*
 153 *of the circuit court shall cause a copy of such order to be forwarded to the Virginia Criminal Sentencing*
 154 *Commission, the Department of State Police, and the state or local correctional facility or secure facility, as*
 155 *defined in § 16.1-228, where the petitioner is incarcerated. When calculating a sentence modified pursuant to*
 156 *this section, the petitioner shall receive credit for any time served in any local or state correctional facility or*
 157 *secure facility.*
 158 *N. The decision of a circuit court to dismiss a petition or to modify a sentence pursuant to this section*
 159 *shall not form the basis for relief in any habeas corpus or appellate proceeding, unless such decision was*
 160 *contrary to law. Filing a petition under this section shall not be construed to abridge, toll, or modify any*
 161 *existing remedy, including filing a writ of habeas corpus, a writ of actual innocence, or any other form of*
 162 *relief.*
 163 *O. The attorney for the Commonwealth shall not require that a person waive his right to petition for*
 164 *modification of a sentence pursuant to this section as a condition of a plea agreement. Notwithstanding the*
 165 *terms of any plea agreement that attempts to limit the filing of a petition for modification of a sentence*
 166 *pursuant to this section, a court may modify such sentence, provided that the other requirements of this*
 167 *section are met.*
 168 *P. Whenever a person becomes eligible to petition for modification of a sentence pursuant to this section,*
 169 *the Department of Corrections shall notify, within 30 days of such person becoming eligible, such person of*
 170 *his eligibility along with a copy of this section, the form for the fillable petition provided by the Supreme*
 171 *Court of Virginia, and all information necessary to complete such form. The notification shall be provided to*
 172 *each eligible individual in his primary language. Upon request of the petitioner or counsel for the petitioner,*
 173 *the Department of Corrections shall provide any records, electronic and paper, associated with the*
 174 *petitioner, without cost, including sentencing orders, program enrollment and completion, security status,*
 175 *case plan documentation, risk assessment data and evaluation, medical records, and any other relevant*
 176 *records. A copy of any such records requested and provided shall also be provided to the court and the*
 177 *attorney for the Commonwealth.*
 178 *Q. The Department of Corrections shall ensure that any counsel appointed to represent a petitioner*
 179 *confined in a state correctional facility has an opportunity to have reasonable contact with his client, whether*
 180 *in person, by telephone, or by mail. At the request of the petitioner or counsel for the petitioner, the circuit*
 181 *court shall enter an order of transportation to transfer the petitioner to the local or regional correctional*

182 *facility serving the circuit court in which the petition was filed so that the petitioner is reasonably able to*
183 *assist his attorney in the preparation of the petition.*

184 *R. No fee shall be charged for filing a petition under subsection E or F.*

185 *S. A person convicted of a crime that is subsequently repealed or for which the penalty or sentencing*
186 *range is subsequently reduced may petition the circuit court that entered the original judgment or order for*
187 *modification of his sentence pursuant to this section at any time, and such person shall automatically qualify*
188 *for modification of his sentence, regardless of whether good cause is shown. The court shall modify the*
189 *sentence to be in compliance with the penalties for the offense in effect on the date of the hearing on the*
190 *petition for modification of a sentence.*