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SENATE BILL NO. 427  
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Deeds  
on February 13, 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) 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; (ii) (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; (iii) human trafficking in violation of § 18.2-355; (iv) an act of terrorism as described in § 18.2-46.4; (v) 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; (vi) producing or filming child pornography in violation of § 18.2-374.1; (vii) lynching in violation of § 18.2-40; (viii) death by mob in violation of § 18.2-45; (ix) committing, conspiring, aiding, or abetting acts of terrorism in violation of § 18.2-46.5; or (x) treason in violation of § 18.2-481, 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 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) malicious wounding in violation of § 18.2-51; (iii) 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; (iv) shooting, stabbing, or maiming by mob in violation of § 18.2-41; (v) shooting, stabbing, etc., with intent to maim or kill in violation of § 18.2-51; (vi) malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical services personnel in violation of § 18.2-51.1; (vii) burning or destroying a meeting house, etc., in violation of § 18.2-79; or (viii) 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 may 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, except for a conviction of a Class 1 felony, 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 petition for modification of a sentence shall be filed with the circuit court that entered the original judgment or order on a form provided by the Supreme Court of Virginia by the petitioner or his counsel. Such petition shall allege with specificity all of the following: (i) the petitioner's full name and date of birth; (ii) the offense for which the petitioner was convicted; (iii) the date on which such offense was alleged to have been committed; (iv) the date on which the petitioner was sentenced for such offense; (v) whether the petitioner remains incarcerated in a state or local correctional facility or secure facility serving the sentence he is

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60 seeking to modify, and if so, which facility; (vi) whether the petitioner has previously filed any other petition  
61 in accordance with this section; and (vii) the reason the petitioner is requesting a sentence modification and  
62 any information in support thereof. If the petitioner fails to submit a completed form, the circuit court may  
63 allow the petitioner to amend the petition to correct any deficiency. Failure to include all information  
64 pursuant to this subsection shall not be grounds for dismissal of the petition.

65 E. The Commonwealth shall be made party to the proceeding. The petitioner shall provide a copy of the  
66 petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth of the city  
67 or county in which the petition is filed.

68 F. Upon receipt, the court shall conduct a preliminary review of the petition. The court may summarily  
69 dismiss the petition if the petitioner fails to state good cause to modify his sentence. The court shall provide a  
70 written explanation of the reason for the dismissal as prescribed in subsection K.

71 If the court believes good cause exists to grant the petition, the court shall notify the attorney for the  
72 Commonwealth of the city or county in which the petition is filed and order such attorney for the  
73 Commonwealth to file an answer to the petition indicating his position within 60 days of receipt of such  
74 order, which may be extended for good cause shown, and a copy of which shall be provided to the petitioner  
75 or his counsel by delivery or by first-class mail, postage prepaid. Such answer shall address the factors listed  
76 in subsection J. If the attorney for the Commonwealth objects to hearing the petition or does not respond to a  
77 petition, the court shall dismiss such petition. No attorney for the Commonwealth shall be required to  
78 respond to a petition except upon an order of the court.

79 If the attorney for the Commonwealth does not object, the court shall direct the attorney for the  
80 Commonwealth to make reasonable efforts to notify any victim of the crime, as defined in § 19.2-11.01, that a  
81 petition has been filed and request such victim's agreement to hear the petition. If the victim does not agree to  
82 such request or does not respond to a petition, the court shall dismiss the petition. No victim shall be required  
83 to respond to a petition.

84 If the crime that such petitioner is convicted of and incarcerated for does not have an identifiable victim,  
85 a response from the attorney for the Commonwealth shall be sufficient to proceed under this section.

86 No agreement by the attorney for the Commonwealth or the victim to hear the petition shall be construed  
87 to be an agreement to modify a sentence in any future hearing.

88 G. If the attorney for the Commonwealth and the victim agree to hearing the petition, the court shall  
89 conduct a hearing on the petition within 90 days of the filing of the petition. The court may continue the  
90 hearing to a date more than 90 days after the filing of the petition with the agreement of the petitioner and  
91 the attorney for the Commonwealth or upon motion of the court for good cause. The attorney for the  
92 Commonwealth shall make reasonable efforts to notify any victim, as defined in § 19.2-11.01, of such hearing  
93 and of the victim's right to testify, subject to the provisions of § 19.2-295.3, at the hearing and to submit a  
94 Victim Impact Statement, subject to the provisions of § 19.2-299.1, which may include information of any  
95 changes related to the factors outlined in § 19.2-299.1 since the petitioner's original sentencing. If the  
96 attorney for the Commonwealth is unable to contact the victim, he shall file a written pleading outlining the  
97 efforts made to notify the victim. Prior to the hearing on the petition, the court shall determine whether such  
98 efforts made are reasonable.

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

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

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

115 When determining whether there is good cause to modify the petitioner's sentence, the court shall  
116 consider the following factors:

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

120 2. The age of the petitioner at the time the petition was filed and any relevant research presented at the

121 hearing regarding the decline in criminal behavior as individuals grow older;  
 122 3. The history and characteristics of the petitioner at the time of the hearing, including rehabilitation  
 123 demonstrated by the petitioner, the petitioner's disciplinary record while incarcerated, and the petitioner's  
 124 efforts to participate in any educational or therapeutic programs;  
 125 4. Whether the petitioner was the victim of domestic or sexual abuse at the time of the offense and whether  
 126 such abuse was related to the petitioner's commission of the offense, and any treatment or therapy the  
 127 petitioner has received since the time of his sentencing;  
 128 5. Any report from a physical, mental, or psychiatric examination of the petitioner conducted by a  
 129 licensed health care professional that has occurred after the initial sentencing hearing and any treatment the  
 130 petitioner has received while incarcerated;  
 131 6. Any testimony or Victim Impact Statement presented by any victim of the offense or by a family member  
 132 of the victim if such victim is deceased;  
 133 7. Any evidence that the petitioner was sentenced above the recommendation of the original discretionary  
 134 sentencing guidelines;  
 135 8. Compliance with the petitioner's case plan, as described by the Department of Corrections operating  
 136 procedures, during the five years preceding the filing of the petition;  
 137 9. Any evidence of the petitioner's acts of service, leadership, or mentorship he engaged in or developed  
 138 independently while incarcerated;  
 139 10. Any information regarding the petitioner's reentry plan, including his prospective residence and any  
 140 employment plans;  
 141 11. Any information related to the petitioner's support from community leaders, faith leaders, or other  
 142 stakeholders as deemed appropriate by the court;  
 143 12. Whether release of the petitioner presents a danger to any other person or to the public; and  
 144 13. Any other information the court determines to be relevant to whether the petitioner has changed since  
 145 the time of his original sentencing or relevant to whether there is good cause to modify his sentence.  
 146 K. Within 30 days of the hearing or dismissal, or as soon as practicable, the court shall file with the  
 147 record of the case a written explanation for the grant or denial of the petition and shall provide a copy of  
 148 such written explanation to the petitioner and to the attorney for the Commonwealth. The written explanation  
 149 shall address each of the factors in subsection J and indicate the weight given to each factor.  
 150 L. Following the entry of an order to modify a sentence pursuant to this section, within five days the clerk  
 151 of the circuit court shall cause a copy of such order to be forwarded to the Virginia Criminal Sentencing  
 152 Commission, the Department of State Police, and the state or local correctional facility or secure facility, as  
 153 defined in § 16.1-228, where the petitioner is incarcerated. When calculating a sentence modified pursuant to  
 154 this section, the petitioner shall receive credit for any time served in any local or state correctional facility or  
 155 secure facility.  
 156 M. The decision of a circuit court to dismiss a petition or to modify a sentence pursuant to this section  
 157 shall not form the basis for relief in any habeas corpus or appellate proceeding, unless such decision was  
 158 contrary to law. Filing a petition under this section shall not be construed to abridge, toll, or modify any  
 159 existing remedy, including filing a writ of habeas corpus, a writ of actual innocence, or any other form of  
 160 relief.  
 161 N. The attorney for the Commonwealth shall not require that a person waive his right to petition for  
 162 modification of a sentence pursuant to this section as a condition of a plea agreement. Notwithstanding the  
 163 terms of any plea agreement that attempts to limit the filing of a petition for modification of a sentence  
 164 pursuant to this section, a court may modify such sentence, provided that the other requirements of this  
 165 section are met.  
 166 O. Whenever a person becomes eligible to petition for modification of a sentence pursuant to this section,  
 167 the Department of Corrections shall notify, within 30 days of such person becoming eligible, such person of  
 168 his eligibility and send, along with a copy of this section, the form for the fillable petition provided by the  
 169 Supreme Court of Virginia, and all information necessary to complete such form. The notification shall be  
 170 provided to each eligible individual in his primary language. Upon request of the petitioner or counsel for  
 171 the petitioner, the Department of Corrections shall provide any records, electronic and paper, associated  
 172 with the petitioner, without cost, including sentencing orders, program enrollment and completion, security  
 173 status, case plan documentation, risk assessment data and evaluation, medical records, and any other  
 174 relevant records. A copy of any such records requested and provided shall also be provided to the court and  
 175 the attorney for the Commonwealth.  
 176 P. No fee shall be charged for filing a petition under subsection D.