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HOUSE BILL NO. 1413
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee for Courts of Justice
 on _____)

(Patron Prior to Substitute—Delegate Schmidt)

A BILL to amend and reenact §§ 19.2-265.6 and 19.2-306.1 of the Code of Virginia, relating to limitation on sentence upon revocation of suspension of sentence; technical violations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-265.6 and 19.2-306.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-265.6. Dismissal of criminal charges or an alleged violation of a suspended sentence or probation imposed as a result of a felony conviction on Commonwealth's motion; effect of dismissal.

A. Upon motion of the Commonwealth to dismiss a charge or an alleged violation of a suspended sentence or probation imposed as a result of a felony conviction, whether with or without prejudice, and with the consent of the defendant, ~~a~~ the court shall grant ~~the~~ such motion unless ~~the court~~ it finds by clear and convincing evidence that ~~the~~ such motion was made as the result of (i) bribery or (ii) bias or prejudice toward a victim as defined in § 19.2-11.01 because of the race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin of the victim.

B. No dismissal of any criminal charge or an alleged violation of a suspended sentence or probation imposed as a result of a felony conviction by a court shall bar subsequent prosecution of the charge or an alleged violation of a suspended sentence or probation imposed as a result of a felony conviction unless jeopardy attached at the earlier proceeding or unless the dismissal order explicitly states that the dismissal is with prejudice.

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

A. For the purposes of this section, "technical violation" means a violation based on the probationer's failure to (i) report any arrest, including traffic tickets, within three days to the probation officer; (ii) maintain regular employment or notify the probation officer of any changes in employment; (iii) report within three days of release from incarceration; (iv) permit the probation officer to visit his home and place of employment; (v) follow the instructions of the probation officer, be truthful and cooperative, and report as instructed; (vi) refrain from the use of alcoholic beverages or marijuana to the extent that it disrupts or interferes with his employment or orderly conduct; (vii) refrain from the use, possession, or distribution of controlled substances or related paraphernalia, *except that use or possession of marijuana shall be allowed pursuant to the limitations of subdivision (vi) unless specifically prohibited by the court*; (viii) refrain from the use, ownership, possession, or transportation of a firearm; (ix) gain permission to change his residence or remain in the Commonwealth or other designated area without permission of the probation officer; ~~or~~ (x) maintain contact with the probation officer whereby his whereabouts are no longer known to the probation officer. ~~Multiple technical violations arising from a single course of conduct or a single incident or considered at the same revocation hearing shall not be considered separate technical violations for the purposes of sentencing pursuant to this section;~~ (xi) pay any fines, costs, or restitution or complete community service, unless the court finds that the probationer has willfully failed to pay or complete such community service; (xii) comply with any condition of a court-ordered or probation-ordered treatment, rehabilitative program, recovery court established pursuant to § 18.2-254.1, specialty docket established pursuant to § 18.2-254.2, or behavioral health docket established pursuant to § 18.2-254.3; (xiii) comply with any condition of monitoring, including (a) electronic monitoring by a GPS (Global Positioning System) tracking device or other similar device or (b) remote alcohol or drug monitoring; or (xiv) appear in court. The court shall consider all technical violations that are alleged to have occurred after a prior sentencing or revocation hearing as a single technical violation and adjudicate the case as such, with punishment imposed pursuant to subsection C. No court shall treat multiple technical violations during a single probationary period between such prior sentencing or revocation hearing as separate cases or adjudicate such violations at separate hearings.

B. If the court finds the basis of a violation of the terms and conditions of a suspended sentence or probation is that the defendant was convicted of a criminal offense that was committed after the date of the suspension, or has violated another condition other than (i) a technical violation or (ii) a good conduct violation that did not result in a criminal conviction, then the court may revoke the suspension and impose or resuspend any or all of that period previously suspended.

C. The court shall not impose a sentence of a term of active incarceration upon a first technical violation of the terms and conditions of a suspended sentence or probation, and there shall be a presumption against imposing a sentence of a term of active incarceration for any second technical violation of the terms and conditions of a suspended sentence or probation. However, if the court finds, by a preponderance of the evidence, that the defendant committed a second technical violation and he cannot be safely diverted from

60 active incarceration through less restrictive means, the court may impose not more than 14 days of active
61 incarceration for a second technical violation. The court may impose whatever sentence might have been
62 originally imposed for a third or subsequent technical violation. For the purposes of this subsection, a first
63 technical violation based on clause (viii) or (x) of subsection A shall be considered a second technical
64 violation, and any subsequent technical violation also based on clause (viii) or (x) of subsection A shall be
65 considered a third or subsequent technical violation. *It shall be a defense to an alleged violation pursuant to*
66 *this section if the defendant can show that he has substantially complied with his probation obligations.*

67 D. *When a defendant has been taken into custody for an alleged technical violation for which the court*
68 *may impose not more than 14 days of active incarceration, the court shall docket such case as soon as*
69 *practicable, and any such case shall be given precedence on the docket. If such violation is not adjudicated*
70 *within 14 days of the defendant being taken into custody, the defendant shall be admitted to bail, unless (i)*
71 *such defendant consents to being further detained while awaiting adjudication or sentencing or (ii) the*
72 *Commonwealth has established, by clear and convincing evidence, that the defendant presents a significant*
73 *risk of harm to himself or the community based on substance use disorder or serious mental illness and has*
74 *been referred for residential treatment. Notwithstanding the foregoing, no such defendant shall be held in*
75 *custody awaiting adjudication of or sentencing on such alleged technical violation for longer than 30 days.*

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