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HOUSE BILL NO. 853

Offered January 14, 2026

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; report.

Patron—Cousins

Referred to Committee for Courts of Justice

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 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) 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) any 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) 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, 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

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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, as defined in § 16.1-228, serving the sentence he is seeking to modify, and if so, which facility; (vi) whether the petitioner has previously filed any other petition in accordance with this section; and (vii) the reason the petitioner is requesting a sentence modification and any information in support thereof. If the petitioner fails to submit a completed form, the circuit court may allow the petitioner to amend the petition to correct any deficiency. Failure to include all information pursuant to this subsection shall not be grounds for dismissal of the petition.

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

F. Upon receipt, the court shall conduct a preliminary review of the petition. The court may summarily dismiss the petition, without prejudice, if the petitioner fails to state good cause to modify his sentence. The court shall provide a written explanation of the reason for the dismissal as prescribed in subsection K.

If the court believes good cause exists to grant the petition, the court shall notify the attorney for the Commonwealth of the city or county in which the petition is filed and order such attorney for the Commonwealth to file an answer to the petition indicating his position within 60 days of receipt of such order, which may be extended for good cause shown, and a copy of which shall be provided to the petitioner or his counsel by delivery or by first-class mail, postage prepaid. Such answer shall address the factors listed in subsection J.

The court shall direct the Department of Corrections to make reasonable efforts to notify any victim of the crime, as defined in § 19.2-11.01, or his designee that a petition has been filed. No victim shall be required to respond to a petition except upon an order of the court.

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

G. The court shall conduct a status hearing on the petition within 120 days of the filing of the petition. The court may continue the hearing to a date more than 120 days after the filing of the petition with the agreement of the petitioner and the attorney for the Commonwealth. The Department of Corrections shall make reasonable efforts to notify any victim, as defined in § 19.2-11.01, or his designee of such hearing and of the victim's right to testify, subject to the provisions of § 19.2-295.3, at the hearing and to submit a Victim Impact Statement, subject to the provisions of § 19.2-299.1, which may include information of any changes related to the factors outlined in § 19.2-299.1 since the petitioner's original sentencing. If the Department of Corrections is unable to contact the victim or his designee, he shall file a written pleading outlining the efforts made to notify the victim or his designee. Prior to the hearing on the petition, the court shall determine whether such efforts made are reasonable. Failure of the Department of Corrections to make reasonable efforts to notify any victim or his designee shall not preclude the court from considering the petition. The court may continue the hearing to a date not more than 120 days after the filing of the petition with the agreement of the petitioner and the attorney for the Commonwealth or upon motion of the court for good cause shown.

H. Following notification of the victim or his designee as provided in § 19.2-11.01, the victim or his designee shall be permitted to review the petitioner's Department of Corrections records, including program enrollment and completion, security status, case plan documentation, risk assessment data and evaluation, and any other relevant records. The victim or his designee may also participate in a facilitated encounter with the petitioner pursuant to the provisions of subsection B of § 53.1-30. During such facilitated encounter, a victim, immediate survivor, or his designee may pursue any elements of restorative justice practices as they choose, including seeking answers, providing perspective or feedback, and requesting specific actions or measures to repair the harm caused by the petitioner. The court may continue the hearing to a date not more than 180 days or a later date agreed upon by the petitioner and the attorney for the Commonwealth to facilitate scheduling a facilitated encounter. The proceedings of this process shall be sealed and only disclosed to the court by the petitioner or victim or his designee. The petitioner may withdraw the petition without prejudice at any time. Nonparticipation in this process by either the petitioner or the victim or his designee shall not be considered by the court.

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

J. At such hearing, the petitioner and the attorney for the Commonwealth may submit additional evidence, including witness testimony and documentary evidence. Subject to the provisions of § 19.2-295.3, the court shall permit any victim or his designee to testify at the hearing, and subject to the provisions of § 19.2-299.1,

any victim may submit a Victim Impact Statement to be considered by the court at the hearing. Such testimony may also be submitted in writing or in pre-recorded audio format.

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

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

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

2. The age of the petitioner at the time the petition was filed and any relevant research presented at the hearing regarding the decline in criminal behavior as individuals grow older;

3. The history and characteristics of the petitioner at the time of the hearing, including rehabilitation demonstrated by the petitioner, the petitioner's disciplinary record while incarcerated, and the petitioner's efforts to participate in any educational or therapeutic programs;

4. Whether the petitioner was the victim of domestic violence, sexual abuse, or human trafficking at the time of the offense and whether such circumstances influenced the commission of the offense as an act of survival or self-preservation, and any treatment or counseling the petitioner has received since the time of his sentencing;

5. Any report from a physical, mental, or psychiatric examination of the petitioner conducted by a licensed health care professional that has occurred after the initial sentencing hearing and any treatment or programming the petitioner has received while incarcerated;

6. Any testimony or Victim Impact Statement presented by any victim or his designee of the offense or by a family member of the victim if such victim is deceased;

7. Any evidence that the petitioner was sentenced above the recommendation of the original discretionary sentencing guidelines;

8. Compliance with the petitioner's case plan, as described by the Department of Corrections operating procedures, during the five years preceding the filing of the petition;

9. Any evidence of the petitioner's acts of service, leadership, or mentorship he engaged in or developed independently while incarcerated;

10. Any information regarding the petitioner's reentry plan, including his prospective residence and any employment plans;

11. Any information related to the petitioner's support from community leaders, faith leaders, or other stakeholders as deemed appropriate by the court; and

12. Any other information the court determines to be relevant to whether the petitioner has changed since the time of his original sentencing or relevant to whether there is good cause to modify his sentence.

L. Within 30 days of the hearing or dismissal, or as soon as practicable, the court shall file with the record of the case a written explanation for the grant or denial of the petition and shall provide a copy of such written explanation to the petitioner and to the attorney for the Commonwealth. The written explanation shall address each of the factors in subsection K and indicate the weight given to each factor.

M. Following the entry of an order to modify a sentence pursuant to this section, within five days the clerk of the circuit court shall cause a copy of such order to be forwarded to the Virginia Criminal Sentencing Commission, the Department of State Police, and the state or local correctional facility or secure facility, as defined in § 16.1-228, where the petitioner is incarcerated. When calculating a sentence modified pursuant to this section, the petitioner shall receive credit for any time served in any local or state correctional facility or secure facility.

N. The decision of a circuit court to dismiss a petition or to modify a sentence pursuant to this section shall not form the basis for relief in any habeas corpus or appellate proceeding, unless such decision was contrary to law. Filing a petition under this section shall not be construed to abridge, toll, or modify any existing remedy, including filing a writ of habeas corpus, a writ of actual innocence, or any other form of relief.

O. The attorney for the Commonwealth shall not require that a person waive his right to petition for modification of a sentence pursuant to this section as a condition of a plea agreement. Notwithstanding the terms of any plea agreement that attempts to limit the filing of a petition for modification of a sentence pursuant to this section, a court may modify such sentence, provided that the other requirements of this section are met.

P. Whenever a person becomes eligible to petition for modification of a sentence pursuant to this section,

183 *the Department of Corrections shall notify, within 30 days of such person becoming eligible, such person of*
184 *his eligibility and send, along with a copy of this section, the form for the fillable petition provided by the*
185 *Supreme Court of Virginia, and all information necessary to complete such form. The notification shall be*
186 *provided to each eligible individual in his primary language. Within 60 days of the final hearing, the*
187 *Department of Corrections shall provide any records, electronic and paper, associated with the petitioner,*
188 *without cost, including sentencing orders, program enrollment and completion, security status, case plan*
189 *documentation, risk assessment data and evaluation, and any other relevant records. A copy of any such*
190 *records requested and provided shall also be provided to the court and the attorney for the Commonwealth.*

191 *Q. No fee shall be charged for filing a petition under subsection D.*

192 **2. The Department of Corrections shall convene a work group to advise on the implementation of the**
193 **provisions of this act and related victim notifications requirements. The work group shall be composed**
194 **of representatives from the Office of the Attorney General, the Department of Corrections, the**
195 **American Civil Liberties Union of Virginia, Families Against Mandatory Minimums, the National**
196 **Coalition of Public Safety Officers of Virginia, the Police Benevolent Association, Nolef Turns, Inc.,**
197 **Sistas in Prison Reform, The Humanization Project, Americans for Prosperity Virginia, the Virginia**
198 **Association of Commonwealth's Attorneys, the Virginia Indigent Defense Commission, the Virginia**
199 **Sexual and Domestic Violence Action Alliance, the Virginia Victim Assistance Network, the Victim**
200 **Witness Assistance Program, and other relevant stakeholders. The work group shall consider and**
201 **recommend best practices for effective and uniform implementation of this act. The work group shall**
202 **also evaluate and recommend updates to victim notification systems, including the Virginia VINE**
203 **(Victim Information and Notification Everyday) System and the Notification and Assistance for Victim**
204 **Inclusion (NAAVI) system, to permit regular and timely notifications from arrest through post-**
205 **sentencing, release, and supervision. The work group shall complete its meetings by November 1, 2026,**
206 **and report its findings and recommendations to the General Assembly no later than December 1, 2026.**