

SUBCOMMITTEE:

HOUSE BILL NO. 2038

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Scott)

A BILL to amend and reenact §§ 19.2-303, 19.2-303.1, and 19.2-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-306.1, relating to probation, revocation, and suspension of sentence; limitations.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-303, 19.2-303.1, and 19.2-306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-306.1 as follows:**

**§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.**

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The court may fix the period of probation for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned. Any period of supervised probation shall not exceed five years from the release of the defendant from any active period of incarceration. The limitation on the period of probation shall not apply to the extent that an additional period of probation is necessary for the defendant to participate in a court-ordered program. The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295,

27 the court shall file a statement of the reasons for the suspension or modification in the same manner as the  
28 statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant  
29 of any offense for which a report to the Central Criminal Records Exchange is required in accordance with  
30 subsection A of § 19.2-390, shall determine whether a copy of the defendant's fingerprints or fingerprint  
31 identification information has been provided by a law-enforcement officer to the clerk of court for each  
32 such offense. In any case where fingerprints or fingerprint identification information has not been provided  
33 by a law-enforcement officer to the clerk of court, the judge shall require that fingerprints and a photograph  
34 be taken by a law-enforcement officer as a condition of probation or of the suspension of the imposition  
35 or execution of any sentence for such offense. Such fingerprints shall be submitted to the Central Criminal  
36 Records Exchange under the provisions of subsection D of § 19.2-390.

37 In those courts having electronic access to the Local Inmate Data System (LIDS) within the  
38 courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether  
39 a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank  
40 maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter  
41 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored  
42 in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom,  
43 the court shall order that the defendant appear within 30 days before the sheriff or probation officer and  
44 allow the sheriff or probation officer to take the required sample. The order shall also require that, if the  
45 defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the  
46 date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure  
47 to appear and provide the required sample.

48 After conviction and upon sentencing of an active participant or member of a criminal street gang,  
49 the court may, as a condition for suspending the imposition of the sentence in whole or in part or for  
50 placing the accused on probation, place reasonable restrictions on those persons with whom the accused  
51 may have contact. Such restrictions may include prohibiting the accused from having contact with anyone  
52 whom he knows to be a member of a criminal street gang, except that contact with a family or household  
53 member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

54 ~~In~~ Notwithstanding any other provision of law, in any case where a defendant is convicted of a  
55 violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1,  
56 committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order  
57 that the period of suspension shall be for a length of time at least equal to the statutory maximum period  
58 for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall  
59 be placed on probation for that period of suspension subject to revocation by the court. The conditions of  
60 probation may include such conditions as the court shall determine, including active supervision. Where  
61 the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-  
62 67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation  
63 include active supervision of the defendant under a postrelease supervision program operated by the  
64 Department of Corrections, and for at least three years of such active supervision, the defendant shall be  
65 subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other  
66 similar device.

67 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any  
68 time before the sentence has been completely served, suspend the unserved portion of any such sentence,  
69 place the person on probation ~~for such time as the court shall determine~~ in accordance with the provisions  
70 of this section, or otherwise modify the sentence imposed.

71 If a person has been sentenced for a felony to the Department of Corrections but has not actually  
72 been transferred to a receiving unit of the Department, the court which heard the case, if it appears  
73 compatible with the public interest and there are circumstances in mitigation of the offense, may, at any  
74 time before the person is transferred to the Department, suspend or otherwise modify the unserved portion  
75 of such a sentence. The court may place the person on probation ~~for such time as the court shall determine~~  
76 in accordance with the provisions of this section.

77 **§ 19.2-303.1. Fixing period of suspension of sentence.**

78 In any case where a court suspends the imposition or execution of a sentence, it may fix the period  
79 of suspension ~~for a reasonable time, having due regard to the gravity of the offense, without regard up to~~

80 the statutory maximum period for which the defendant might originally have been sentenced to be  
81 imprisoned.

82 **§ 19.2-306. Revocation of suspension of sentence and probation.**

83 A. In any case in which the court has suspended the execution or imposition of sentence, the court  
84 may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time  
85 within the probation period, or within the period of suspension fixed by the court. If neither a probation  
86 period nor a period of suspension was fixed by the court, then the court may revoke the suspension for  
87 any cause the court deems sufficient that occurred within the maximum period for which the defendant  
88 might originally have been sentenced to be imprisoned.

89 B. The court may not conduct a hearing to revoke the suspension of sentence unless the court  
90 issues process to notify the accused or to compel his appearance before the court within 90 days of  
91 receiving notice of the alleged violation or within one year after the expiration of the period of probation  
92 or the period of suspension, whichever is sooner, or, in the case of a failure to pay restitution, within three  
93 years after such expiration. If neither a probation period nor a period of suspension was fixed by the court,  
94 then the court shall issue process within ~~one year~~ six months after the expiration of the maximum period  
95 for which the defendant might originally have been sentenced to be incarcerated. Such notice and service  
96 of process may be waived by the defendant, in which case the court may proceed to determine whether  
97 the defendant has violated the conditions of suspension.

98 C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms  
99 of suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke  
100 the suspension, and the court may ~~pronounce whatever sentence might have been originally imposed~~  
101 impose a sentence in accordance with the provisions of § 19.2-306.1 or (ii) if the court originally  
102 suspended the execution of the sentence, the court shall revoke the suspension and the original sentence  
103 shall be in full force and effect. The court may again suspend all or any part of this sentence for a period  
104 up to the statutory maximum period for which the defendant might originally have been sentenced to be  
105 imprisoned, less any time already served, and may place the defendant upon terms and conditions or

106 probation. The court shall measure the period of any suspension of sentence from the date of the entry of  
107 the original sentencing order.

108 D. If any court has, after hearing, found no cause to impose a sentence that might have been  
109 originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a  
110 sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which the  
111 hearing was held, shall be barred.

112 E. Nothing contained herein shall be construed to deprive any person of his right to appeal in the  
113 manner provided by law to the circuit court having criminal jurisdiction from a judgment or order revoking  
114 any suspended sentence.

115 **§ 19.2-306.1. Limitation on sentence upon revocation of suspension of sentence; exceptions.**

116 A. For the purposes of this section, "technical violation" means a violation based on the  
117 probationer's failure to (i) report any arrest, including traffic tickets, within three days to the probation  
118 officer; (ii) maintain regular employment or notify the probation officer of any changes in employment;  
119 (iii) report within three days of release from incarceration; (iv) permit the probation officer to visit his  
120 home and place of employment; (v) follow the instructions of the probation officer, be truthful and  
121 cooperative, and report as instructed; (vi) refrain from the use of alcoholic beverages to the extent that it  
122 disrupts or interferes with his employment or orderly conduct; (vii) refrain from the use, possession, or  
123 distribution of controlled substances or related paraphernalia; (viii) refrain from the use, ownership,  
124 possession, or transportation of a firearm; (ix) gain permission to change his residence or remain in the  
125 Commonwealth or other designated area without permission of the probation officer; or (x) maintain  
126 contact with the probation officer whereby his whereabouts are no longer known to the probation officer.  
127 Multiple technical violations arising from a single course of conduct or a single incident or considered at  
128 the same revocation hearing shall not be considered separate technical violations for the purposes of  
129 sentencing pursuant to this section.

130 B. If the court finds the basis of a violation of the terms and conditions of a suspended sentence or  
131 probation is that the defendant was convicted of a criminal offense or has violated another condition other

132 than a technical violation, then the court may pronounce whatever sentence might have been originally  
133 imposed.

134 C. The court shall not impose a sentence of a term of incarceration upon a first technical violation  
135 of the terms and conditions of a suspended sentence or probation, and there shall be a presumption against  
136 imposing a sentence of a term of incarceration for any second technical violation of the terms and  
137 conditions of a suspended sentence or probation. However, if the court finds, by a preponderance of the  
138 evidence, that the defendant committed a second technical violation and he cannot be safely diverted from  
139 incarceration through less restrictive means, the court may impose (i) not more than 14 days of  
140 incarceration for a second technical violation or (ii) whatever sentence might have been originally imposed  
141 for a third or subsequent technical violation.

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

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