

HOUSE BILL NO. 834

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Cousins)

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:

- 27 1. Has served at least 25 years of his sentence; and
28 2. Has not (i) filed a petition for modification of a sentence pursuant to this section within the
29 preceding three years, (ii) had a sentence modified pursuant to this section within the preceding five years,
30 or (iii) filed more than two petitions for modification of a sentence pursuant to this section.

31 B. Notwithstanding any other provision of law or rule of court, upon petition of a person who
32 remains incarcerated in a state or local correctional facility or secure facility, as defined in § 16.1-228,
33 -serving the sentence for any conviction or for a combination of any convictions of (i) a first and single
34 offense of second degree murder as described in § 18.2-32; (ii) where the victim was an adult, a felony
35 offense of (a) rape in violation of § 18.2-61, (b) forcible sodomy in violation of § 18.2-67.1, (c) object
36 sexual penetration in violation of § 18.2-67.2, or (d) aggravated sexual battery in violation of § 18.2-67.3;
37 (iii) malicious wounding in violation of § 18.2-51; (iv) entering a dwelling with the intent to commit rape,
38 murder, or arson in violation of § 18.2-77, 18.2-79, or 18.2-80; (v) shooting, stabbing, or maiming by mob
39 in violation of § 18.2-41; (vi) shooting, stabbing, etc., with intent to maim or kill in violation of § 18.2-
40 51; (vii) malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or
41 emergency medical services personnel in violation of § 18.2-51.1; (viii) burning or destroying a meeting
42 house, etc., in violation of § 18.2-79; or (ix) reproduction, distribution, solicitation, and facilitation of
43 child pornography in violation of subsection C or D of § 18.2-374.1:1, the circuit court that entered the
44 original judgment or order shall grant a hearing to determine whether to modify such person's sentence if
45 such person:

- 46 1. Has served at least 20 years of his sentence; and
47 2. Has not (i) filed a petition for modification of a sentence pursuant to this section within the
48 preceding three years, (ii) had a sentence modified pursuant to this section within the preceding five years,
49 or (iii) filed more than two petitions for modification of a sentence pursuant to this section.

50 C. Notwithstanding any other provision of law or rule of court, upon petition of a person who
51 remains incarcerated in a state or local correctional facility or secure facility, as defined in § 16.1-228,
52 -serving the sentence for any conviction or for a combination of any convictions not enumerated in

53 subsection A or B, the circuit court that entered the original judgment or order may grant a hearing to
54 determine whether to modify such person's sentence if such person:

55 1. Has served at least 15 years of his sentence; and

56 2. Has not (i) filed a petition for modification of a sentence pursuant to this section within the
57 preceding three years, (ii) had a sentence modified pursuant to this section within the preceding five years,
58 or (iii) filed more than two petitions for modification of a sentence pursuant to this section.

59 D. The petition for modification of a sentence shall be filed with the circuit court that entered the
60 original judgment or order on a form provided by the Supreme Court of Virginia by the petitioner or his
61 counsel. Such petition shall allege with specificity all of the following: (i) the petitioner's full name and
62 date of birth; (ii) the offense for which the petitioner was convicted; (iii) the date on which such offense
63 was alleged to have been committed; (iv) the date on which the petitioner was sentenced for such offense;
64 (v) whether the petitioner remains incarcerated in a state or local correctional facility or secure facility
65 -serving the sentence he is seeking to modify, and if so, which facility; (vi) whether the petitioner has
66 previously filed any other petition in accordance with this section; and (vii) the reason the petitioner is
67 requesting a sentence modification and any information in support thereof. If the petitioner fails to submit
68 a completed form, the circuit court may allow the petitioner to amend the petition to correct any deficiency.
69 Failure to include all information pursuant to this subsection shall not be grounds for dismissal of the
70 petition.

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

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

77 If the court believes good cause exists to grant the petition, the court shall notify the attorney for
78 the Commonwealth of the city or county in which the petition is filed and order such attorney for the
79 Commonwealth to file an answer to the petition indicating his position within 60 days of receipt of such

80 order, which may be extended for good cause shown, and a copy of which shall be provided to the
81 petitioner or his counsel by delivery or by first-class mail, postage prepaid. Such answer shall address the
82 factors listed in subsection J. If the attorney for the Commonwealth objects to hearing the petition, the
83 court shall dismiss such petition. No attorney for the Commonwealth shall be required to respond to a
84 petition except upon an order of the court.

85 If the attorney for the Commonwealth does not object, the court shall direct the attorney for the
86 Commonwealth to make reasonable efforts to notify any victim of the crime, as defined in § 19.2-11.01,
87 that a petition has been filed and request such victim's agreement to hear the petition. If the victim does
88 not agree to such request, the court shall dismiss the petition. No victim shall be required to respond to a
89 petition except upon an order of the court.

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

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

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

107 H. The hearing on the petition shall be conducted by the judge who entered the original judgment
108 or order unless such judge is no longer available, in which case the chief judge of the circuit court shall
109 assign the petition to another judge of that circuit court. The petitioner may appear by use of two-way
110 electronic video and audio communication that meets the standards set forth in subsection B of § 19.2-
111 3.1.

112 I. At such hearing, the petitioner and the attorney for the Commonwealth may submit additional
113 evidence, including witness testimony and documentary evidence. Subject to the provisions of § 19.2-
114 295.3, the court shall permit any victim to testify at the hearing, and subject to the provisions of § 19.2-
115 299.1, any victim may submit a Victim Impact Statement to be considered by the court at the hearing.

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

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

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

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

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

134 4. Whether the petitioner was the victim of domestic or sexual abuse at the time of the offense and
135 whether such abuse was related to the petitioner's commission of the offense, and any treatment or therapy
136 the petitioner has received since the time of his sentencing;

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

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

142 7. Any evidence concerning whether the petitioner's sentence was enhanced because the petitioner
143 exercised his constitutional right to a trial or evidence that the petitioner was sentenced above the
144 recommendation of the original discretionary sentencing guidelines;

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

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

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

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

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

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

159 L. Following the entry of an order to modify a sentence pursuant to this section, within five days
160 the clerk of the circuit court shall cause a copy of such order to be forwarded to the Virginia Criminal

161 Sentencing Commission, the Department of State Police, and the state or local correctional facility or
162 secure facility, as defined in § 16.1-228, where the petitioner is incarcerated. When calculating a sentence
163 modified pursuant to this section, the petitioner shall receive credit for any time served in any local or
164 state correctional facility or secure facility.

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

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

175 O. Whenever a person becomes eligible to petition for modification of a sentence pursuant to this
176 section, the Department of Corrections shall notify, within 30 days of such person becoming eligible, such
177 person of his eligibility and send, along with a copy of this section, the form for the fillable petition
178 provided by the Supreme Court of Virginia, and all information necessary to complete such form. The
179 notification shall be provided to each eligible individual in his primary language. Upon request of the
180 petitioner or counsel for the petitioner, the Department of Corrections shall provide any records, electronic
181 and paper, associated with the petitioner, without cost, including sentencing orders, program enrollment
182 and completion, security status, case plan documentation, risk assessment data and evaluation, medical
183 records, and any other relevant records. A copy of any such records requested and provided shall also be
184 provided to the court and the attorney for the Commonwealth.

185 P. No fee shall be charged for filing a petition under subsection D.

186 Q. A person convicted of a crime that is subsequently repealed or for which the penalty or
187 sentencing range is subsequently reduced may petition the circuit court that entered the original judgment

188 or order for modification of his sentence pursuant to this section at any time, and such person shall
189 automatically qualify for modification of his sentence, regardless of whether good cause is shown. The
190 court shall modify the sentence to be in compliance with the penalties for the offense in effect on the date
191 of the hearing on the petition for modification of a sentence.

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