

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: HB2038 H2

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Scott

3. Committee: Courts of Justice

4. Title: Probation, revocation, and suspension of sentence; limitations.

5. Summary: This bill amends several sections of the Code of Virginia that pertain to the suspension of sentences, placing offenders on probation, and imposing sentences for technical probation violations.

Under current law, if a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine or otherwise modify the sentence imposed. This bill limits the length of the suspended sentence or time a person can be placed on probation to not more than the maximum period for which the defendant might have been sentenced, or not more than five years, whichever is less.

The bill also amends §19.2-303.1 (fixing period of suspension of sentence). Currently, in any case where a court suspends the imposition or execution of a sentence, it may fix the period of suspension for a reasonable time, having due regard to the gravity of the offense, without regard to the maximum period for which the defendant might have been sentenced. This bill limits the period of suspension to not more than the maximum period for which the defendant might have been sentenced.

This bill provides that under §19.2-306.C (revocation of suspension of sentence and probation), if the court, after hearing, finds good cause to believe that a defendant has violated the terms of suspension, the court may again suspend all or any part of this sentence for a period not to exceed the maximum period for which the defendant might have been sentenced less any time already served and may place the defendant upon terms and conditions or probation. In such cases, the bill requires the court to measure the period of any suspension of sentence from the date of the entry of the original judgment order.

This bill also adds § 19.2-306.1, which provides exceptions to the limitation on sentences imposed when the suspension of sentence has been revoked. This section:

- Prohibits the court from imposing a sentence of a term of incarceration upon revocation of a suspended sentence unless it finds the defendant has been convicted of another crime;

- Allows the court to impose a determinate sentence of total confinement if the court finds, by a preponderance of the evidence, that the defendant committed a technical violation that (i) was sexual in nature; (ii) involved assaultive behavior or included a credible threat to cause bodily injury to another; (iii) involved possession or control of a weapon; (iv) involved an intentional failure to adhere to recommended programming or conditions on more than three occasions, and the defendant cannot be safely diverted from total confinement through less restrictive means; or (v) there exists an identifiable threat to public safety, and the defendant cannot be safely diverted from total confinement through less restrictive means. This provision applies only after a first technical violation.
- Allows the court to impose a sentence of no more than (i) 14 days for a second technical violation or (ii) 30 days for a third or subsequent technical violation when the violation falls within the parameters (i) through (v) as described in the previous bullet. For a third or subsequent technical violation, the court may impose any sentencing alternatives that were available at the time of initial sentencing.
- The bill provides that the court may add not more than 30 additional days for a second technical violation, or not more than 45 days for a third or subsequent technical violation for a sentence of a term of incarceration upon revocation of a suspended sentence for a technical violation that (a) was sexual in nature, (b) involved assaultive behavior or included a credible threat to cause bodily injury to another, (c) involved possession or control of a weapon, or (d) involved an intentional failure to adhere to recommended programming or conditions on more than three occasions.
- The court must consider allowing the term of incarceration to be served on evenings or weekends for employed probationers who have committed a second technical violation.

The substitute bill amends the definition of technical violation to mean 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 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; (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.

6. Budget Amendment Necessary: Indeterminate

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: According to Sentencing Guidelines data for fiscal years (FY) 2019 and 2020 among 21,321 felony offenders, 624 offenders (2.9 percent) were sentenced to probation for more than five years. The median probation sentence for this time period was 12.0 months, and the mean was 20.9 months. Sentencing Revocation Report (SRR) data for

fiscal years FY 2019 and FY 2020 show that among 14,427 offenders with a suspended sentence revoked for a technical violation, 10,606 offenders (73.5 percent) received a sentence of more than 14 days and 10,488 offenders (72.7 percent) received a sentence of more than 30 days. The median sentence among technical violators for this time period was 4.0 months, and the mean was 7.9 months.

Although it is not feasible to estimate the impact this bill may have in the future, limiting the length of sentences that can be imposed on probation violators is expected to reduce bed-space needs in local and regional jails. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local jail.

According to the Department of Corrections, this bill is not expected to have a fiscal impact on agency operations.

9. Specific Agency or Political Subdivisions Affected: Local and regional jails, Courts

10. Technical Amendment Necessary: No

11. Other Comments: None