

Department of Planning and Budget 2021 Special Session I - Fiscal Impact Statement

1. Bill Number: HB2038 ER

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. Patron: Scott

3. Committee: Passed both houses

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 must 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.

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§ 19.2-306.1, which provides exceptions to the limitation on sentences imposed when the suspension of sentence has been revoked.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

- 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.

- Provides that 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.
- Prohibits the court from imposing a sentence of a term of incarceration upon a first technical violation of the terms and conditions of a suspended sentence or probation, and establishes that there must be a presumption against imposing a sentence of a term of 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 incarceration through less restrictive means, the bill allows the court to impose not more than 14 days of incarceration for a second technical violation and allows the court to impose whatever sentence might have been originally imposed for a third or subsequent technical violation.
- Provides that the limitations on sentencing in this section do not apply to the extent that an additional term of incarceration is necessary to allow a defendant to be evaluated for or to participate in a court-ordered drug, alcohol, or mental health treatment program. In such case, the court must order the shortest term of incarceration possible to achieve the required evaluation or participation.

6. Budget Amendment Necessary: Indeterminate

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

8. Fiscal Implications: Upon further review by the Virginia Criminal Sentencing Commission, Sentencing Guidelines data for fiscal years (FY) 2019 and 2020 among 48,318 felony offenders, 1,426 offenders (3.0 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