

Use of Discretionary Sentencing Guidelines

SUGGESTED LANGUAGE:

Be it enacted by the General Assembly of Virginia

That Code of Virginia: § 19.2-298.01(B) 19.2-298.01(F) are amended and reenacted as follows:

B: In any felony case, other than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure. *The written explanation must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.*

F: *The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner or the failure to impose sentence within the range recommended by the sentencing guidelines shall be reviewable on appeal. In reviewing the sentence, the appellate court must first ensure that the court made no significant procedural errors and then consider the sentence's substantive reasonableness under a deferential abuse-of-discretion standard, taking into account the totality of the circumstances.*

PURPOSE:

The purpose of the proposed bill is to achieve consistency, elimination of discrimination and fairness in sentencing by allowing appellate review of the decision of a judge to depart from the sentencing guidelines recommendations. Although the sentencing guidelines are discretionary and advisory in nature. § 19.2-298.01(B) requires the judge to provide a written reason for any departure from the guidelines recommendation. Yet, notwithstanding this mandate of the law, the Virginia Sentencing Commission Annual Reports from FY2007 to FY2013, for instance, show that no written reason for departure was provided by judges in more than 3,000 cases in which the sentence imposed exceeded the guidelines recommendation. Thus, it is unclear whether the departure in those cases was due to factors like race and economic status that should not play a role in sentencing decisions. This amendment will eliminate such problem and make Virginia's truth-in-sentencing transparent and serve the very purpose for which it was enacted. Finally, the standard of appellate review in § 19.2-298.01(F) will establish the legal standard set forth by the United States Supreme Court for review of sentences imposed outside the federal sentencing guidelines in *Gall v. United States*, 552 U.S. 38(2007)

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