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SENATE BILL NO. 168

Offered January 12, 2000

A BILL to amend and reenact §§ 19.2-311, 19.2-313, 19.2-314, 19.2-315, 19.2-316 and 53.1-63 of the Code of Virginia, relating to youthful offenders.

Patrons—Mims, Forbes, Howell, Puller, Quayle, Rerras and Reynolds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-311, 19.2-313, 19.2-314, 19.2-315, 19.2-316 and 53.1-63 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-311. Indeterminate commitment to Department of Corrections in certain cases; duration and character of commitment; concurrence by Department.

A. The judge, after a finding of guilt, when fixing punishment in those cases specifically enumerated in subsection B of this section, may, in his discretion, in lieu of imposing any other penalty provided by law and, with consent of the person convicted, commit such person for a period of four years, which commitment shall be indeterminate in character. *In addition, the court shall impose a period of confinement which shall be suspended.* Subject to the provisions of subsection C hereof, such persons shall be committed to the Department of Corrections *for a confinement in a state facility for youthful offenders established pursuant to § 53.1-63* for initial confinement for a period ~~not to exceed three of not less than two and one-half years.~~ Such confinement shall be followed by at least ~~one year one and one-half years~~ of supervisory parole, conditioned on good behavior; ~~but such parole period shall not, in any case, continue beyond the four-year period.~~ The sentence of indeterminate commitment and eligibility for continuous evaluation and parole under § 19.2-313 shall remain in effect but eligibility for use of programs and facilities ~~specified in § 53.1-64 established pursuant to § 53.1-63~~ shall lapse if such person (i) ~~voluntarily withdraws from the youthful offender program;~~ (ii) exhibits intractable behavior as defined in § 53.1-66, or (iii) (ii) is convicted of a second criminal offense which is a felony. A sentence imposed for any second criminal offense shall run consecutively with the indeterminate sentence.

B. The provisions of subsection A of this section shall be applicable to first convictions in which the person convicted:

1. Committed the offense of which convicted ~~after becoming eighteen but before becoming~~ twenty-one years of age; ~~or was a juvenile tried as an adult in the circuit court;~~

2. Was convicted of ~~an offense which is either (i) a felony offense other than any of the following: capital murder, murder in the first degree or murder in the second degree or (ii) a misdemeanor involving injury to a person or damage to or destruction of property; and a violation of §§ 18.2-61, 18.2-67.1, 18.2-67.2 or subdivision A 1 of § 18.2-67.3.~~

3. Is considered by the judge to be capable of returning to society as a productive citizen following a reasonable amount of rehabilitation.

C. Subsequent to a finding of guilt and prior to fixing punishment, the Department of Corrections ~~and the Parole Board~~ shall, concurrently with the evaluation required by § 19.2-316, review all aspects of the case to determine whether (i) *such defendant is physically and emotionally suitable for the program,* (ii) such indeterminate sentence of commitment is in the best interest of the Commonwealth and of the person convicted, and ~~(ii)(iii)~~ (iii) facilities are available for the confinement of such person. After the review such person shall be again brought before the court, which shall review the findings of the Department ~~and the Parole Board~~. The court may impose a sentence as authorized in subsection A, or any other penalty provided by law.

D. *Upon the defendant's failure to complete the program established pursuant to § 53.1-63 or to comply with the terms and conditions through no fault of his own, the defendant shall be brought before the court for hearing. Notwithstanding the provisions for pronouncement of sentence as set forth in § 19.2-306, the court, after hearing, may pronounce whatever sentence was originally imposed, pronounce a reduced sentence, or impose such other terms and conditions of probation as it deems appropriate.*

§ 19.2-313. Eligibility for release.

Any person committed under the provisions of § 19.2-311 shall be eligible for release following initial study, testing and diagnosis ~~at any time prior to the~~ *after* completion of ~~three~~ *two and one-half* years in confinement. The Virginia Parole Board shall have discretion to release such person upon *certification by the Director of the Department of Corrections that the person has successfully completed the program established pursuant to § 53.1-63 and a determination that he or she has demonstrated that*

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60 such release is compatible with the interests of society and of such person and his or her successful
61 rehabilitation to that extent. The Department and Parole Board shall make continuous evaluation of ~~their~~
62 ~~his~~ progress to determine ~~their~~ ~~his~~ readiness for release. All such persons, in any event, shall be
63 released by the Parole Board after ~~three~~four years' confinement. Any person committed under § 19.2-311
64 who was convicted of a misdemeanor and is determined to be unsuitable for the institution program
65 established under the provisions of Article 4 (~~§ 53.1-63 et seq.~~) of Chapter 2 of Title 53.1 pursuant to
66 § 53.1-63 shall be released after one year of confinement or the maximum confinement for the
67 misdemeanor whichever is less.

68 § 19.2-314. Supervision of persons released.

69 The Virginia Parole Board shall supervise every *Every* person released under § 19.2-313 shall receive
70 intensive parole supervision for a period of at least ~~one year~~ *one and one-half years* and may ~~continue~~
71 ~~such supervised~~ have parole supervision continued for a longer period, if ~~it~~the Parole Board deems
72 ~~such~~it advisable, provided such initial parole period shall not extend beyond the termination of the
73 ~~four-year~~ period.

74 § 19.2-315. Compliance with terms and conditions of parole; time on parole not counted as part of
75 commitment period.

76 Every person on parole under § 19.2-314 shall comply with such terms and conditions as may be
77 prescribed by the Board according to § 53.1-157 and shall be subject to the penalties imposed by law
78 for a violation of such terms and conditions. Notwithstanding any other provision of the Code, if parole
79 is revoked as a result of any such violation, such person may be returned to the institution established
80 under Article 4 (~~§ 53.1-63 et seq.~~) of Chapter 2 of Title 53.1 pursuant to § 53.1-63 upon the direction of
81 the Parole Board with the concurrence of the Department of Corrections, provided such person has not
82 been convicted since his release on parole of an offense constituting a felony under the laws of the
83 Commonwealth. Time on parole shall not be counted as part of the four-year period of commitment
84 under this section. *In addition, such person may be brought before the sentencing court for imposition of*
85 *all or part of the suspended sentence.*

86 § 19.2-316. Evaluation and report prior to determining punishment.

87 After a finding of guilt but prior to fixing punishment as provided for in ~~§ 19.2-314~~ or other
88 applicable provisions of law, the court shall commit, for a period not to exceed sixty days, the person
89 convicted to the diagnostic component of those facilities of the institution established under Article 4
90 (~~§ 53.1-63 et seq.~~) of Chapter 2 of Title 53.1 for full and adequate study, testing, diagnosis, evaluation
91 and report on the person's potential for rehabilitation through confinement and treatment in such
92 facilities.

93 *Following conviction and prior to sentencing the court shall order such defendant committed to the*
94 *Department of Corrections for a period not to exceed sixty days from the date of referral for evaluation*
95 *and diagnosis by the Department to determine the person's potential for rehabilitation through*
96 *confinement and treatment in the facilities and programs established pursuant to § 53.1-63. The*
97 *evaluation and diagnosis shall include a complete physical and mental examination of the defendant and*
98 *may be conducted by the Department of Corrections at any state or local facility, probation and parole*
99 *office, or other location deemed appropriate by the Department. The Department of Corrections shall*
100 *conduct the evaluation and diagnosis and shall review all aspects of the case within sixty days from the*
101 *date of conviction or revocation of ordinary probation and shall recommend that the defendant be*
102 *committed to the facility established pursuant to § 53.1-63 upon finding that (i) such defendant is*
103 *physically and emotionally suitable for the program, (ii) such commitment is in the best interest of the*
104 *Commonwealth and the defendant, and (iii) facilities are available for confinement of the defendant.*

105 If the Director of the Department of Corrections determines such person should be confined in a
106 facility other than one established under Article 4 of Chapter 2 of Title 53.1 pursuant to § 53.1-63, a
107 written report giving the reasons for such decision shall be submitted to the sentencing court. The court
108 shall not be bound by such written report in the matter of determining punishment. Additionally, the
109 person may be committed or transferred to a mental hospital or like institution, as provided by law,
110 during such sixty-day period.

111 § 53.1-63. Department to establish facilities for persons committed under § 19.2-311 et seq.

112 A. The Department shall establish, staff and maintain, at any state correctional facility designated by
113 the Board, programs and housing for the rehabilitation, training and confinement of persons committed
114 to the Department under the provisions of § 19.2-311 et seq. Persons admitted to these facilities shall be
115 determined by the Department to have the potential for rehabilitation through confinement and treatment
116 therein.

117 B. Elements of the program shall include but not be limited to (i) an initial period of military style
118 drill, (ii) cognitive behavioral restructuring designed to teach responsibility and accountability through
119 anger management, life skills development, substance abuse education, parenting skills development and
120 peer tutoring, (iii) developmental counseling as needed, (iv) academic education and vocational training
121 and apprenticeships, and (v) transitional release, re-entry services, aftercare and intensive parole

122 *supervision.*

123 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
124 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
125 **is \$170,400 in FY 2008.**

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