

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact § 19.2-316.1 of the Code of Virginia, relating to eligibility for boot camp incarceration.*

[S 188]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That § 19.2-316.1 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-316.1. Eligibility for participation; evaluation; sentencing; withdrawal or removal from program.

An individual may be eligible to be sentenced as provided herein if he (i) is convicted on or after January 1, 1991, of a nonviolent felony, or is deemed by the court to be nonviolent in character, (ii) is no older than twenty-four at the time of conviction for the offense, (iii) has never before been incarcerated upon a felony conviction in a correctional facility of any state, the District of Columbia, the United States or its territories, and (iv) has not been confined for more than twelve months nor for more than one term of confinement in a local correctional facility of any such jurisdiction; however, confinement for misdemeanor traffic convictions shall not be considered in determining eligibility.

Following conviction and prior to sentencing, upon motion of the defendant, the court may order such defendant committed to the Department of Corrections for a period not to exceed sixty days from the date of referral or the date of revocation of ordinary probation, as the case may be, for evaluation and diagnosis by the Department to determine suitability for participation in the Boot Camp Incarceration Program established pursuant to § 53.1-67.1. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant and may be conducted by the Department of Corrections at any state or local facility, probation and parole office, or other location deemed appropriate by the Department.

The Department of Corrections shall conduct the evaluation and diagnosis and shall review all aspects of the case within sixty days from the date of conviction or revocation of ordinary probation and shall recommend that the defendant be committed to the Boot Camp Incarceration Program upon finding that (i) such defendant is physically and emotionally suitable for the program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for confinement of the defendant.

Upon receipt of such a recommendation and written consent of the defendant to participate in the program, and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following a reasonable amount of intensive supervision and rehabilitation including program components set forth in § 53.1-67.1, and the defendant would otherwise be committed to the Department of Corrections for a period of confinement, the court shall impose such sentence of confinement as authorized by law and suspend the sentence and place the defendant on probation. Such probation shall be conditioned upon the defendant's entry into and successful completion of a Boot Camp Incarceration Program established by the Department of Corrections pursuant to § 53.1-67.1. The court may impose such other terms and conditions of probation as it deems appropriate.

Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department of Corrections for intractable behavior, or (iii) refusal to comply with the terms and conditions of probation imposed by the court, the defendant shall be brought before the court for hearing. Upon a finding that the defendant voluntarily chooses to withdraw from the program, exhibited intractable behavior as defined herein, or refused to comply with terms and conditions of probation, the court may revoke all or part of the suspended sentence and probation. Upon revocation of the suspension and probation, the provisions of §§ 53.1-191, 53.1-196 and 53.1-198 through 53.1-201 shall apply retroactively to the date of sentencing.

Upon the defendant's failure to complete the program or to comply with the terms and conditions of probation imposed by the court 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.

"Intractable behavior" means that behavior which, in the determination of the Department of Corrections, (i) indicates an inmate's unwillingness or inability to conform his behavior to that necessary

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57 to his successful completion of the program or (ii) is so disruptive as to threaten the successful  
58 completion of the program by other participants.

59 "Nonviolent felony" means any felony except ~~murder, manslaughter, kidnapping, sexual assault,~~  
60 ~~malicious wounding, robbery, those considered an "act of violence" pursuant to § 19.2-297.1~~ or any  
61 attempt to commit any of ~~these~~ *those* crimes.

62 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**  
63 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**  
64 **is \$0 in FY 2010.**