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HOUSE BILL NO. 682

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 18, 2008)

(Patron Prior to Substitute—Delegate Miller, P.J.)

A BILL to amend and reenact § 19.2-316.2 of the Code of Virginia, relating to detention center incarceration programs.

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-316.2 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-316.2. Eligibility for participation in detention center incarceration program; evaluation; sentencing; withdrawal or removal from program.

A. A defendant who otherwise would have been sentenced to incarceration for a nonviolent felony as defined in § 19.2-316.1 or who has been previously incarcerated for a nonviolent felony as defined in § 19.2-316.1 but otherwise meets the following criteria and (i) who is determined by the court to need more security or supervision than provided by the diversion center incarceration program under § 53.1-67.7, (ii) whose age or physical condition disqualifies him from the Boot Camp Incarceration Program under § 53.1-67.1, and (iii) who can benefit from a regimented environment and structured program, may be considered for commitment to a detention center established under § 53.1-67.8 as follows:

1. Following conviction and prior to imposition of sentence or following a finding that the defendant's probation should be revoked, upon motion of the defendant or the attorney for the Commonwealth or upon the court's own motion, the court may order such defendant committed to the Department of Corrections for a period not to exceed 60 days from the date of commitment for evaluation and diagnosis by the Department to determine suitability for participation in the Detention Center Incarceration Program. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant and may be conducted by the Department at any state or local correctional facility, probation and parole office, or other location deemed appropriate by the Department. *When a defendant who has not been charged with a new criminal offense and who may be subject to a revocation of probation, scores incarceration on the probation violation guidelines and agrees to participate, the probation and parole officer, with the approval of the court, may commit the defendant to the Department for such evaluation, for a period not to exceed 60 days.*

2. Upon determination that (i) such defendant is physically and emotionally suited for the program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for the confinement of the defendant, the Department shall recommend to the court in writing that the defendant be committed to the Detention Center Incarceration Program.

3. Upon receipt of such a recommendation 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 successful completion of the program, and if the defendant would otherwise be committed to the Department, the court (i) shall impose sentence, suspend the sentence, and place the defendant on probation or (ii) following a finding that the defendant has violated the terms and conditions of his probation previously ordered, shall place the defendant on probation pursuant to this section.. Such probation shall be conditioned upon the defendant's entry into and successful completion of the Detention Center Incarceration Program. The court shall order that, upon successful completion of the program, the defendant shall be released from confinement and be under intensive probation supervision for a period to be specified by the court followed by an additional period of regular probation of not less than one year. The court shall further order that the defendant, following release from confinement, shall (a) make reasonable efforts to secure and maintain employment, (b) comply with a plan of restitution or community service, (c) comply with a plan for payment of fines, if any, and costs of court, and (d) undergo appropriate substance abuse treatment, if necessary. The court may impose such other terms and conditions of probation as it deems appropriate. A sentence to the Detention Center Incarceration Program shall not be imposed as an addition to an active sentence to a state correctional facility.

4. Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of probation, the court shall cause the defendant to show cause why his probation and suspension of sentence should not be revoked. Upon a finding that the defendant voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of probation, the court may revoke all or part of the probation and suspended sentence and commit the defendant as otherwise provided in this chapter.

60 B. Any offender as described in § 19.2-316.1 paroled under § 53.1-155 or mandatorily released under
61 § 53.1-159 and for whom probable cause that a violation of parole or of the terms and conditions of
62 mandatory release, other than for the occurrence of a new felony or Class 1 or Class 2 misdemeanor,
63 has been determined under § 53.1-165, may be considered by the Parole Board for commitment to a
64 detention center as established under § 53.1-67.8 as follows:

65 1. The Parole Board or its authorized hearing officer, with the violator's consent, may order the
66 violator to be evaluated and diagnosed by the Department of Corrections to determine suitability for
67 participation in the Detention Center Incarceration Program. The evaluation and diagnosis may be
68 conducted by the Department at any state or local correctional facility, probation or parole office, or
69 other location deemed appropriate by the Department.

70 2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the
71 violator and (ii) facilities are available for the confinement of the violator, *or upon receipt of a*
72 *defendant's voluntary participation form from the probation and parole officer and a determination that*
73 *(i) and (ii) have been met*, the Department shall recommend to the Parole Board in writing that the
74 violator be committed to the Detention Center Incarceration Program. The Department shall have the
75 final authority to determine an individual's suitability for the program.

76 3. Upon receipt of such a recommendation and a determination by the Parole Board that the violator
77 will benefit from the program and is capable of returning to society as a productive citizen following
78 successful completion of the program, the violator shall be placed under parole supervision for a period
79 of not less than one year. The Parole Board may impose such other terms and conditions of parole or
80 mandatory release as it deems appropriate. ~~The time spent in the program shall not be counted as~~
81 ~~service of any part of a term of imprisonment for which he was sentenced upon his conviction.~~

82 4. Upon the violator's (i) voluntary withdrawal from the program, (ii) removal from the program for
83 intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions
84 of parole or mandatory release, the Department shall conduct a preliminary parole violation hearing to
85 determine if probable cause exists to revoke his parole or mandatory release. Upon a finding that the
86 violator voluntarily withdrew from the program, was removed from the program by the Department for
87 intractable behavior, or failed to comply with the terms and conditions of parole or mandatory release,
88 the Parole Board shall revoke parole or mandatory release and recommit the violator as provided in
89 § 53.1-165.