

# VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

## CHAPTER 387

*An Act to amend and reenact § 19.2-311 of the Code of Virginia, relating to indeterminate commitment of youthful offenders.*

[H 2232]

Approved March 15, 1997

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

**1. That § 19.2-311 of the Code of Virginia is 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. Subject to the provisions of subsection C hereof, such persons shall be committed to the Department of Corrections for initial confinement for a period not to exceed three years. Such confinement shall be followed by at least one year 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 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) 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 ~~not punishable as a Class 4 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

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 indeterminate sentence of commitment is in the best interest of the Commonwealth and of the person convicted and (ii) 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.