

962177264

HOUSE BILL NO. 94

Offered January 10, 1996

A BILL to amend and reenact §§ 16.1-285.2, 53.1-63, 53.1-66, and 53.1-67 of the Code of Virginia, relating to serious offenders; transfer to Department of Corrections; youthful offender program.

Patrons—Hamilton, Barlow, Crittenden, Diamonstein and Fisher; Senator: Norment

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-285.2, 53.1-63, 53.1-66, and 53.1-67 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-285.2. Release and review hearing for serious offender.

A. Upon receipt of a petition of the Department of Youth and Family Services for a hearing concerning a juvenile committed under § 16.1-285.1, the court shall schedule a hearing within thirty days and shall appoint counsel for the juvenile pursuant to § 16.1-266. The court shall provide a copy of the petition, the progress report required by this section, and notice of the time and place of the hearing to (i) the juvenile, (ii) the juvenile's parent, legal guardian, or person standing in loco parentis, (iii) the juvenile's guardian ad litem, if any, (iv) the juvenile's legal counsel, and (v) the attorney for the Commonwealth who prosecuted the juvenile during the delinquency proceeding.

B. The petition shall be filed in the committing court and shall be accompanied by a progress report from the Department. This report shall describe (i) the facility and living arrangement provided for the juvenile by the Department, (ii) the services and treatment programs afforded the juvenile, (iii) the juvenile's progress toward treatment goals and objectives, which shall include a summary of his educational progress, (iv) the juvenile's potential for danger to either himself or the community, and (v) a comprehensive aftercare plan for the juvenile.

C. At the hearing the court shall consider the progress report. The court may also consider additional evidence from (i) probation officers, the ~~learning center~~ *juvenile correctional center*, treatment professionals, and the court service unit; (ii) the juvenile, his legal counsel, parent, guardian or family member; or (iii) other sources the court deems relevant. The hearing and all records relating thereto shall be governed by the confidentiality provisions of Article 12 (§ 16.1-299 et seq.) of this chapter.

D. At the conclusion of the hearing, the court shall order (i) continued commitment of the juvenile to the Department for completion of the original determinate period of commitment or such lesser time as the court may order or (ii) release of the juvenile under such terms and conditions as the court may prescribe. *However, if the juvenile has attained age eighteen years at the time of the hearing, the court may order the transfer of the person to the Department of Corrections for confinement in a youthful offender facility established pursuant to Article 4 (§ 53.1-63 et seq.) of Chapter 2 of Title 53.1 for completion of the original determinate period of commitment. Once such person is transferred to the Department of Corrections, no further annual or other review hearing shall be conducted by the juvenile or family court. The court shall order any person so transferred to be placed under post-release supervision upon release from the youthful offender facility. The period of supervision shall be established by the committing court at the time of transfer; however, such period shall not be less than six months nor more than three years. Post-release supervision shall be conducted in the same manner as provided under § 19.2-295.2.* In making a determination under this section, the court shall consider (i) the experiences and character of the juvenile before and after commitment, (ii) the nature of the offenses that the juvenile was found to have committed, (iii) the manner in which the offenses were committed, (iv) the protection of the community, (v) the recommendations of the Department, and (vi) any other factors the court deems relevant. The order of the court shall be final and not subject to appeal.

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

The Department shall establish, staff and maintain, at any state correctional facility designated by the Board, programs and housing for the rehabilitation, training and confinement of persons committed to the Department under the provisions of § 16.1-285.2 or Article 2 (§ 19.2-311 et seq.) of Chapter 18 of Title 19.2. Persons admitted to these facilities shall be determined by the Department to have the potential for rehabilitation through confinement and treatment therein.

§ 53.1-66. Transfer of prisoners to other facilities.

Any person confined by the Department in a facility established by this chapter may be transferred from such facility to other facilities in the state corrections system for the remainder of the period of commitment under § 16.1-285.2 or Article 2 (§ 19.2-311 et seq.) of Chapter 18 of Title 19.2 upon a written finding by the Department submitted to the sentencing court that the person has exhibited

INTRODUCED

HB94

60 intractable behavior or otherwise becomes ineligible to use such facilities pursuant to § 19.2-311.

61 "Intractable behavior" means behavior which (i) indicates an inmate's unwillingness or inability to
62 conform his behavior to that necessary to his successful completion of the program or (ii) is so
63 disruptive as to threaten the successful completion of the program by other participants.

64 § 53.1-67. Admission to facility; good conduct allowance restricted.

65 In no case shall a person previously confined in a youthful offender facility, whether for a different
66 or the same offense, be confined again in such a facility, except for the purposes of study, testing and
67 diagnosis.

68 The provisions of §§ 53.1-191, 53.1-196, and 53.1-198 through 53.1-201 relating to good conduct
69 credits and allowances and extraordinary service and the provisions of § 53.1-187 relating to credit for
70 time served in a correctional facility or juvenile detention facility shall not apply to persons (i)
71 sentenced to an indeterminate sentence under § 19.2-311 for a crime committed on or after July 1, 1983,
72 or (ii) committed under the provisions of § 16.1-285.2. Acts performed by such persons which would
73 earn credit for them under § 53.1-191, if it were applicable, shall be noted on their record by the
74 authorities of the facility.

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