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SENATE BILL NO. 1221

Offered January 10, 2007

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A *BILL to amend and reenact §§ 19.2-316.1, 19.2-316.2, and 19.2-316.3 of the Code of Virginia, relating to credit for community service performed by offenders participating in community-based corrections programs.*

Patron—Puckett

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-316.1, 19.2-316.2, and 19.2-316.3 of the Code of Virginia are 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 successful completion of a Boot Camp Incarceration Program, community service performed during the defendant's commitment to the program shall be credited toward the total number of hours of community service that a court has ordered the defendant to perform as part of his sentence.

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

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59 probation imposed by the court through no fault of his own, the defendant shall be brought before the
60 court for hearing. Notwithstanding the provisions for pronouncement of sentence as set forth in
61 § 19.2-306, the court, after hearing, may pronounce whatever sentence was originally imposed,
62 pronounce a reduced sentence, or impose such other terms and conditions of probation as it deems
63 appropriate.

64 "Intractable behavior" means that behavior which, in the determination of the Department of
65 Corrections, (i) indicates an inmate's unwillingness or inability to conform his behavior to that necessary
66 to his successful completion of the program or (ii) is so disruptive as to threaten the successful
67 completion of the program by other participants.

68 "Nonviolent felony" means any felony except those considered an "act of violence" pursuant to
69 § 19.2-297.1 or any attempt to commit any of those crimes.

70 § 19.2-316.2. Eligibility for participation in detention center incarceration program; evaluation;
71 sentencing; withdrawal or removal from program.

72 A. A defendant who otherwise would have been sentenced to incarceration for a nonviolent felony as
73 defined in § 19.2-316.1 or who has been previously incarcerated for a nonviolent felony as defined in
74 § 19.2-316.1 but otherwise meets the following criteria and (i) who is determined by the court to need
75 more security or supervision than provided by the diversion center incarceration program under
76 § 53.1-67.7, (ii) whose age or physical condition disqualifies him from the Boot Camp Incarceration
77 Program under § 53.1-67.1, and (iii) who can benefit from a regimented environment and structured
78 program, may be considered for commitment to a detention center established under § 53.1-67.8 as
79 follows:

80 1. Following conviction and prior to imposition of sentence or following a finding that the
81 defendant's probation should be revoked, upon motion of the defendant or the attorney for the
82 Commonwealth or upon the court's own motion, the court may order such defendant committed to the
83 Department of Corrections for a period not to exceed 60 days from the date of commitment for
84 evaluation and diagnosis by the Department to determine suitability for participation in the Detention
85 Center Incarceration Program. The evaluation and diagnosis shall include a complete physical and
86 mental examination of the defendant and may be conducted by the Department at any state or local
87 correctional facility, probation and parole office, or other location deemed appropriate by the
88 Department.

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

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

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

117 B. Any offender as described in § 19.2-316.1 paroled under § 53.1-155 or mandatorily released under
118 § 53.1-159 and for whom probable cause that a violation of parole or of the terms and conditions of
119 mandatory release, other than for the occurrence of a new felony or Class 1 or Class 2 misdemeanor,
120 has been determined under § 53.1-165, may be considered by the Parole Board for commitment to a

detention center as established under § 53.1-67.8 as follows:

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

2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the violator and (ii) facilities are available for the confinement of the violator, the Department shall recommend to the Parole Board in writing that the violator be committed to the Detention Center Incarceration Program. The Department shall have the final authority to determine an individual's suitability for the program.

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

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

C. Upon the successful completion of a Detention Center Incarceration Program, community service performed during the defendant's commitment to the program shall be credited toward the total number of hours of community service that a court has ordered the defendant to perform as part of his sentence.

§ 19.2-316.3. Eligibility for participation in diversion center incarceration program; evaluation; sentencing; withdrawal or removal from program; payment for costs.

A. A defendant (i) who otherwise would have been sentenced to incarceration for a nonviolent felony as defined in § 19.2-316.1 and who the court determines requires more security or supervision than provided by intensive probation supervision or (ii) whose suspension of sentence would otherwise be revoked after a finding that the defendant has violated the terms and conditions of probation for a nonviolent felony as defined in § 19.2-316.1, may be considered for commitment to a diversion center established under § 53.1-67.7 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 45 days from the date of commitment for evaluation and diagnosis by the Department to determine suitability for participation in the Diversion Center Incarceration Program. The evaluation and diagnosis 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.

2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the defendant and (ii) 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 Diversion 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 pursuant to this section 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 Diversion 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, prior to 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

182 any, and costs of court, and (d) undergo substance abuse treatment, if necessary. The court may impose
183 such other terms and conditions of probation as it deems appropriate. A sentence to the Diversion Center
184 Incarceration Program shall not be imposed in addition to an active sentence to a state correctional
185 facility.

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

193 B. Any offender as described in § 19.2-316.1 paroled under § 53.1-155 or mandatorily released under
194 § 53.1-159 and for whom probable cause that a violation of parole or of the terms and conditions of
195 mandatory release, other than the occurrence of a new felony or Class 1 or Class 2 misdemeanor, has
196 been determined under § 53.1-165, may be considered by the Parole Board for commitment to a
197 diversion center as established under § 53.1-67.7 as follows:

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

203 2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the
204 violator and (ii) facilities are available for the confinement of the violator, the Department shall
205 recommend to the Parole Board in writing that the violator be committed to the Diversion Center
206 Incarceration Program. The Department shall have the final authority to determine an individual's
207 suitability for the program.

208 3. Upon receipt of such a recommendation and a determination by the Parole Board that the violator
209 will benefit from the program and is capable of returning to society as a productive citizen following
210 successful completion of the program and if the violator would otherwise be committed to the
211 Department, the Parole Board shall restore the violator to parole supervision conditioned upon entry into
212 and successful completion of the Diversion Center Incarceration Program. The Parole Board shall order
213 that, upon successful completion of the program, the violator shall be placed under parole supervision
214 for a period of not less than one year. The Parole Board may impose such other terms and conditions of
215 parole or mandatory release as it deems appropriate. The time spent in the program shall not be counted
216 as service of any part of a term of imprisonment for which he was sentenced upon his conviction.

217 4. Upon the violator's (i) voluntary withdrawal from the program, (ii) removal from the program by
218 the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the
219 terms and conditions of parole or mandatory release, the Parole Board may revoke parole or mandatory
220 release and recommit the violator as provided in § 53.1-165.

221 C. A person sentenced pursuant to this article shall be required to pay an amount to be determined
222 by the Board of Corrections pursuant to regulation to defray the cost of his keep.

223 D. *Upon the successful completion of a Diversion Center Incarceration Program, community service*
224 *performed during the defendant's commitment to the program shall be credited toward the total number*
225 *of hours of community service that a court has ordered the defendant to perform as part of his sentence.*