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**HOUSE BILL NO. 1718**

Offered January 11, 2023

Prefiled January 9, 2023

*A BILL to amend and reenact § 19.2-316.4 of the Code of Virginia, relating to community corrections alternative program.*

Patrons—Clark, Mundon King and Rasoul; Senator: Locke

Referred to Committee for Courts of Justice

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

**1. That § 19.2-316.4 of the Code of Virginia is amended and reenacted as follows:**

**§ 19.2-316.4. Eligibility for participation in community corrections alternative program; evaluation; sentencing; withdrawal or removal from program; payment of costs.**

A. As used in this article, unless the context requires a different meaning:

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

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

B. A defendant (i) who otherwise would have been sentenced to incarceration for a nonviolent felony and whose identified risks and needs the court determines cannot be addressed by conventional 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, ~~may shall~~ be considered for commitment to a community corrections alternative program established under § 53.1-67.9 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 referred 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 eligibility and suitability for participation in the community corrections alternative program. The evaluation and diagnosis may be conducted by the Department at any state or local correctional facility, probation, 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 refer the defendant to the Department for such evaluation, for a period not to exceed 45 days.

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 community corrections alternative program. The Department shall have the final authority to determine an individual's eligibility and suitability for the program.

3. Upon receipt of such a recommendation and a determination by the court that the defendant will benefit from the community corrections alternative 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~~ *require* the defendant's entry into and successful completion of the community corrections alternative program. The court shall order that, upon successful completion of the program, the defendant shall be released from confinement and be under probation supervision for a period 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 any, and costs of court; and (d) undergo substance abuse treatment, if necessary. The court may impose such other terms and conditions of probation as it deems appropriate to be effective on the defendant's successful completion of the community corrections alternative program. A

INTRODUCED

HB1718

59 sentence to the community corrections alternative program shall not be imposed in addition to an active  
60 sentence to a state correctional facility.

61 4. Upon the defendant's (i) ~~voluntary withdrawal from the community corrections alternative~~  
62 ~~program~~, (ii) removal from the program by the Department for intractable behavior, or ~~(iii)~~ (ii) failure to  
63 comply with the terms and conditions of probation, the court shall cause the defendant to show cause  
64 why his probation and suspension of sentence should not be revoked. Upon a finding that the defendant  
65 ~~voluntarily withdrew from the program~~, was removed from the program by the Department for  
66 intractable behavior, or failed to comply with the terms and conditions of probation, the court may  
67 revoke all or part of the probation and suspended sentence and commit the defendant as otherwise  
68 provided in this chapter.

69 C. Any offender incarcerated for a nonviolent felony paroled under § 53.1-155 or mandatorily  
70 released under § 53.1-159 and for whom probable cause that a violation of parole or of the terms and  
71 conditions of mandatory release, other than the occurrence of a new felony or Class 1 or Class 2  
72 misdemeanor, has been determined under § 53.1-165, ~~may~~ shall be considered by the Parole Board for  
73 commitment to a community corrections alternative program as established under § 53.1-67.9 as follows:

74 1. The Parole Board or its authorized hearing officer, with the violator's consent or upon receipt of a  
75 defendant's written voluntary agreement to participate form from the probation and parole officer, may  
76 order the violator to be evaluated and diagnosed by the Department of Corrections to determine  
77 suitability for participation in the community corrections alternative program. The evaluation and  
78 diagnosis may be conducted by the Department at any state or local correctional facility, probation or  
79 parole office, or other location deemed appropriate by the Department.

80 2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the  
81 violator and (ii) facilities are available for the confinement of the violator, the Department shall  
82 recommend to the Parole Board in writing that the violator be committed to the community corrections  
83 alternative program. The Department shall have the final authority to determine an individual's eligibility  
84 and suitability for the program.

85 3. Upon receipt of such a recommendation and a determination by the Parole Board that the violator  
86 will benefit from the program and is capable of returning to society as a productive citizen following  
87 successful completion of the program and if the violator would otherwise be committed to the  
88 Department, the Parole Board shall restore the violator to parole supervision ~~conditioned upon and~~  
89 ~~require~~ entry into and successful completion of the community corrections alternative program. The  
90 Parole Board shall order that, upon successful completion of the program, the violator shall be placed  
91 under parole supervision for a period of not less than one year. The Parole Board may impose such  
92 other terms and conditions of parole or mandatory release as it deems appropriate to be effective on the  
93 defendant's successful completion of the community corrections alternative program. The time spent in  
94 the program shall not be counted as service of any part of a term of imprisonment for which he was  
95 sentenced upon his conviction.

96 4. Upon the violator's (i) ~~voluntary withdrawal from the program~~, (ii) removal from the program by  
97 the Department for intractable behavior, or ~~(iii)~~ (ii) failure to comply with the terms and conditions of  
98 parole or mandatory release, the Parole Board may revoke parole or mandatory release and recommit the  
99 violator as provided in § 53.1-165.

100 D. A person sentenced pursuant to this article who receives payment for employment while in the  
101 community corrections alternative program shall be required to pay an amount to be determined by the  
102 Department of Corrections to defray the cost of his keep.