

HOUSE BILL NO. 1718

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Clark)

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

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

27 Commonwealth or upon the court's own motion, the court may order such defendant referred to the
28 Department of Corrections for a period not to exceed 45 days from the date of commitment for evaluation
29 and diagnosis by the Department to determine eligibility and suitability for participation in the community
30 corrections alternative program. The evaluation and diagnosis may be conducted by the Department at
31 any state or local correctional facility, probation, parole office, or other location deemed appropriate by
32 the Department. When a defendant who has not been charged with a new criminal offense and who may
33 be subject to a revocation of probation scores incarceration on the probation violation guidelines and
34 agrees to participate, the probation and parole officer, with the approval of the court, may refer the
35 defendant to the Department for such evaluation, for a period not to exceed 45 days.

36 2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and
37 the defendant and (ii) facilities are available for the confinement of the defendant, the Department shall
38 recommend to the court in writing that the defendant be committed to the community corrections
39 alternative program. The Department shall have the final authority to determine an individual's eligibility
40 and suitability for the program.

41 3. Upon receipt of such a recommendation and a determination by the court that the defendant will
42 benefit from the community corrections alternative program and is capable of returning to society as a
43 productive citizen following successful completion of the program, and if the defendant would otherwise
44 be committed to the Department, the court (i) shall impose sentence, suspend the sentence, and place the
45 defendant on probation pursuant to this section or (ii) following a finding that the defendant has violated
46 the terms and conditions of his probation previously ordered, shall place the defendant on probation
47 pursuant to this section. Such probation shall ~~be conditioned upon~~ require the defendant's entry into and
48 successful completion of the community corrections alternative program. The court shall order that, upon
49 successful completion of the program, the defendant shall be released from confinement and be under
50 probation supervision for a period of not less than one year. The court shall further order that the defendant,
51 prior to release from confinement, shall (a) make reasonable efforts to secure and maintain employment;
52 (b) comply with a plan of restitution or community service; (c) comply with a plan for payment of fines,
53 if any, and costs of court; and (d) undergo substance abuse treatment, if necessary. The court may impose

54 such other terms and conditions of probation as it deems appropriate to be effective on the defendant's
55 successful completion of the community corrections alternative program. A sentence to the community
56 corrections alternative program shall not be imposed in addition to an active sentence to a state correctional
57 facility.

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

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

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

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

