

**REPORT OF THE  
VIRGINIA STATE CRIME COMMISSION**

# **Youthful Offender Act**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **HOUSE DOCUMENT NO. 43**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1990**

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# COMMONWEALTH of VIRGINIA

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IN RESPONSE TO  
THIS LETTER TELEPHONE  
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ROBERT E. COLVIN  
EXECUTIVE DIRECTOR

## VIRGINIA STATE CRIME COMMISSION

General Assembly Building

910 Capitol Street

October 17, 1989

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ATTORNEY GENERAL'S OFFICE  
H. LANE KNEEDLER

TO: The Honorable Gerald L. Baliles, Governor of Virginia  
and Members of the General Assembly

Pursuant to formal request of the Virginia Parole Board, the Virginia State Crime Commission undertook a study to "determine the intent of statutory requirements and the correlative procedures for implementation" of the Youthful Offender Act.

In honoring this formal request, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Virginia's Youthful Offender Program.

Respectfully submitted,

Elmon T. Gray  
Chairman

ETG/sm

*Corrections Subcommittee studying  
Youthful Offenders*

*Members*

*Reverend George F. Ricketts, Sr., Chairman  
Senator Howard P. Anderson  
Delegate Robert B. Ball, Sr.  
Mr. Robert C. Bobb  
Senator Elmo G. Cross, Jr.  
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## I. AUTHORITY FOR STUDY

By letter dated March 31, 1989, the Virginia Parole Board made of the Crime Commission a formal request to "conduct a study and review" of the Youthful Offender Act, Code of Virginia, §19.2-311. By vote of the full Crime Commission on April 18, 1989 it was agreed to conduct this study.

§9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report, and make recommendations on all areas of public safety and protection." §9-127 of the Code of Virginia provides that "the Commission shall have duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in §9-125, and to formulate its recommendations to the Governor and the General Assembly." §9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of the Youthful Offender Act requested by the Virginia Parole Board.

## II. MEMBERS APPOINTED TO SERVE

During the April 18, 1989 meeting of the Crime Commission, its Chairman, Senator Elmon T. Gray of Sussex, selected Reverend George F. Ricketts, Sr., to serve as chairman of the Corrections subcommittee which conducted this study. Members of the Crime Commission who serve on the subcommittee are:

Reverend George F. Ricketts, Sr., of Richmond, Chairman

Senator Howard P. Anderson of Halifax

Delegate Robert B. Ball, Sr., of Henrico

Mr. Robert C. Bobb of Richmond

Senator Elmo G. Cross, Jr., of Hanover

Senator Elmon T. Gray of Sussex

Delegate Raymond R. Guest, Jr., of Front Royal

Speaker A. L. Philpott of Bassett

## III. EXECUTIVE SUMMARY

During the course of the study the subcommittee met on four occasions, and heard testimony from corrections officials and members of the Virginia Parole Board.

The information received by the subcommittee suggested the need for amendments to the Youthful Offender Act to resolve ambiguities in the Code and to create an efficient process of moving youths into and out of the program.

The subcommittee found that a redundant testing period required by the present Code, subsequent to sentencing, unnecessarily consumes additional resources, conflicts with Supreme Court rules on jurisdiction of the court, and inhibits authority of the sentencing court.

Conflicting Code sections appear to restrict the ability of the Department of Corrections to place youthful offenders in appropriate facilities other than the singular facility at Southampton.

The subcommittee also found that no statistics were available to measure the effectiveness of the program in terms of reducing recidivism.

Finally, the subcommittee concluded that the Code does not clearly address how to handle those youth sentenced under the Act who are subsequently removed for intractable behavior, or who subsequently receive a second conviction with a determinate sentence. Thus, the subcommittee recommended the following:

1. That, upon loss of eligibility to remain in the youthful offender program, an offender be denied access to actual program components but continue to receive continuous parole evaluation.
2. That an offender receiving a subsequent conviction be paroled, at the Parole Board's discretion, to serve his second sentence consecutively.
3. That "intractable behavior" (the exhibition of which results in loss of eligibility to remain in the youthful offender program) be defined in the Code.
4. That an offender be housed in any suitable facility, not solely the Southampton facility.
5. That all testing for suitability for program be done before sentencing. (No resentencing; no violation of Rule 1:1.)
6. That recidivism rates be tracked for this and other programs.

#### IV. BACKGROUND

The Youthful Offender Act in Virginia (Code of Virginia, §19.2-311 et seq., (See Appendix B.) was passed subsequent to passage of a comparable federal statute which has since been repealed. Prior to 1982, sentencing to the youthful offender program was relatively rare. Since that time the program has been far better utilized, to the point where the youthful offender facility at Southampton is habitually at, or near, capacity.

A legislative review of the youthful offender statute was sought by Frank Saunders of the Virginia Parole Board, to respond to perceived ambiguities in the law and specific difficulties encountered in administration of the program. During the 1989 Session of the Virginia General Assembly, Delegate William P. Robinson, Jr. submitted, but subsequently withdrew, House Bill No. 1558, to amend the Youthful Offender Act. (See Appendix D.) In March, 1989, Clarence Jackson, Chairman of the Parole Board, made a formal request of the Crime Commission for consideration of these problems. In April, 1989 the full Commission voted to review that statute.

#### V. APPLICABLE LAW

- Code of Virginia, §53.1 et seq. Facilities for Youthful Offenders.
- Code of Virginia, §19.2-311 et seq. Indeterminate Commitment.
- Supreme Court of Virginia, Rule 1:1. Finality of Judgments.

## VI. OBJECTIVES/ISSUES

Difficulties in administration of the Youthful Offender Program have arisen as a result of questions as to how existing law should be interpreted, and whether such law serves the objectives of the program.

The subcommittee identified the following as distinct issues for study:

- A. Where should authority for administration of the program derive?
  - (i) What authority does present law grant, and to whom?
  - (ii) In achieving the objectives the law is meant to serve, how should authority and responsibility for administration of the program be apportioned?
- B. How should any conflict between the Youthful Offender Act and Rule 1:1 of the Rules of Supreme Court of Virginia be resolved (should the act be made an exception from the Rule or made to conform therewith).
- C. Does the present law, in the context of existing prison facilities, effectively bar participation of females in the Youthful Offender Program and, if so, how should such obstacles be overcome?
- D. When an individual receives a sentence under the Youthful Offender Act, and in addition receives a determinate sentence (or sentences) for one or more other criminal acts, how should program apply to said individual?

## VII. PROBLEM ANALYSIS/DISCUSSION

### A. Diagnostic Testing for Entry into Program

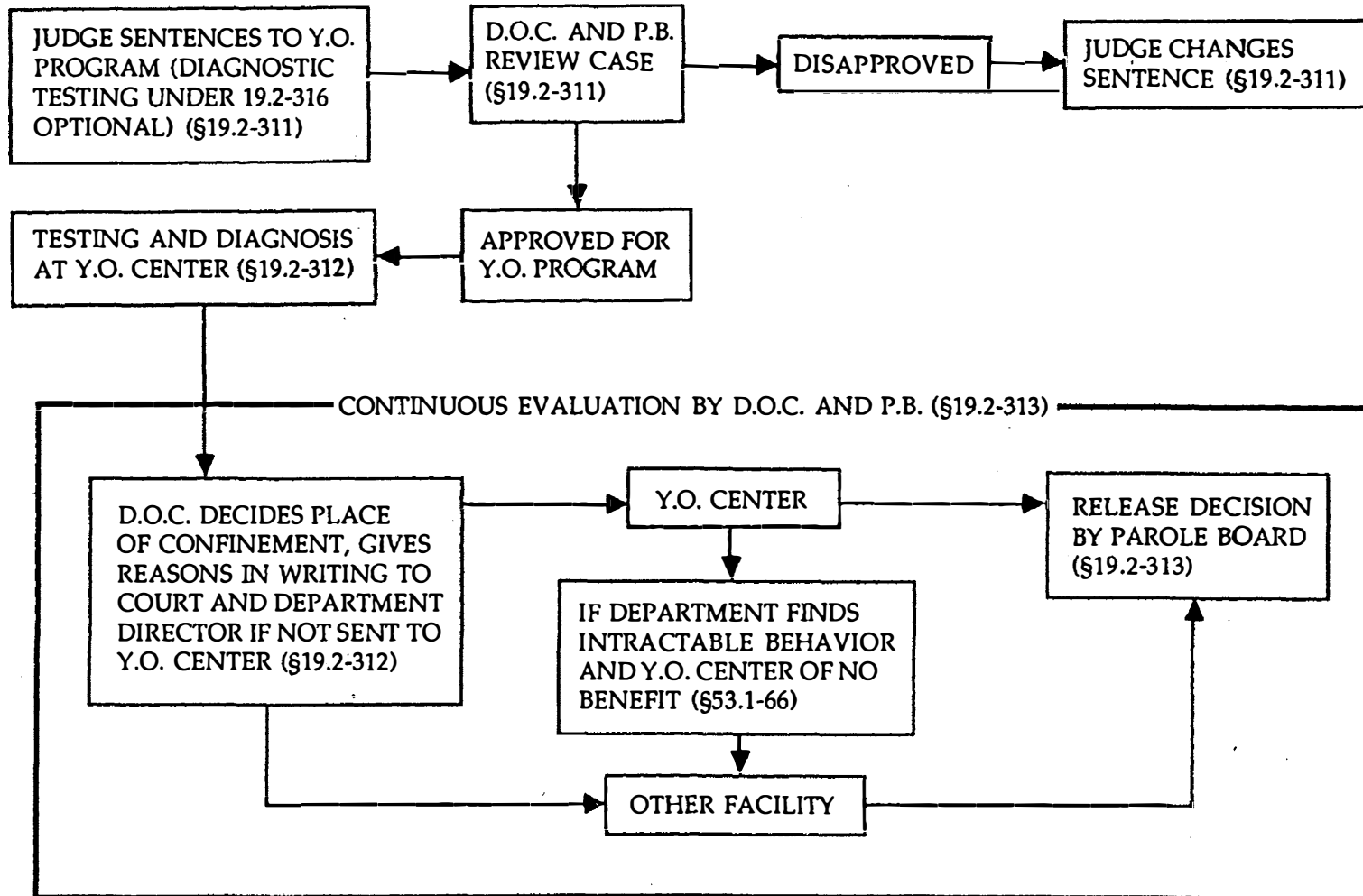
Because there exist multiple stages in the process of sentencing and admitting an individual to the Youthful Offender Program, questions have arisen as to what authority exists at any given time in this process. (See Figure VII.-1 for status of program at the time of this report.)

Under Code of Virginia, §19.2-316, the court may, in its discretion, commit a person to the diagnostic facilities of the Youthful Offender institution for testing prior to any determination of punishment. (See Appendix B.) Whether this option has been exercised by the court or not, a judge may sentence a first offender between the ages of eighteen and twenty-one to an indeterminate sentence under Code of Virginia, §19.2-311. (See Appendix B.)

If a youth is sentenced to this program, a concurrence by the Parole Board and by the Department of Corrections is required to determine that the individual is fit for the program and that facilities remain available. Should concurrence not be reached, the individual must be returned to the court for resentencing. In the case that this process consumes more than twenty-one days, Rule 1:1 of the Rules of Supreme Court of Virginia does not appear to permit a return to the court for resentencing since the court has by that time lost jurisdiction. (See Appendix B.)



## YOUTHFUL OFFENDER PROGRAM SENTENCING, PLACEMENT, PAROLE



Code of Virginia, §19.2-313, allows for parole of "any person committed under the provisions of §19.2-311" at the sole discretion of the Virginia Parole Board, following a requisite "initial study, testing and diagnosis" (See Appendix B). It would appear from the statute, therefore, that only the Parole Board may release an individual from the program once he has already been accepted. The law does not clearly establish that testing as required under §19.2-311 need take place prior to acceptance into the program. Actually, §19.2-313 suggests that the required testing take place subsequent to acceptance into the program.

#### B. Place of Confinement

The Department of Corrections is given explicit authority in Code of Virginia, §53.1-66, to remove any individual from a youthful offender facility upon a finding "that his intractable behavior indicates he will not benefit from the program" (See Appendix B). Removal from such facility is not equivalent to removal from the youthful offender program. In establishing the requirement for separate facilities for the program, however, Code of Virginia, §53.1-63, implies that youthful offenders must be housed at a youthful offender facility. This conclusion would seem to be contradicted by §53.1-64, which specifically recognizes that persons may be "confined elsewhere in the state corrections system under the indeterminate period of commitment authorized by §19.2-311 et seq." (See Appendix B.)

This ambiguity in the law has brought about significant confusion as to the appropriate course of conduct in sentencing and parole for individuals transferred out of the Youthful Offender Center.

#### C. Facilities for Females

The question of facilities for females sentenced under §19.2-311 et seq. is closely related to this section of the law as well. If separate facilities are required for youthful offenders, accommodations must be provided for any females sentenced under the Act. There have been relatively few persons in this category during the history of the youthful offender program in this state, and even these low figures appear to be on the decline. No females were sentenced to the program in 1988 and none were sentenced in 1989 as of the most recent available data (See Appendix C). It is not clear whether the lack of separate facilities is a factor in this regard.

#### D. Resentencing of Ineligible Inmates

The practice of the Parole Board and Department of Corrections at present is to place persons sentenced to the youthful offender program in the reception center at Southampton for approximately five days. Thereafter, they are sent to the Youthful Offender Center for a joint institution assessment. This process appears to encompass both the initial review required under §19.2-311, and the initial study, testing and diagnosis mandated by §19.2-313.

Because this practice normally exceeds twenty-one days, Rule of Court 1:1 does not permit return of these individuals for resentencing if they are not accepted into the program. A consensus by the Department of Corrections and the Parole Board suggests a sixty-day time period to be more appropriate for this process.

§19.2-312 grants authority only to the Department of Corrections to determine where an individual should be confined once that individual is in the program, and has undergone the initial testing and diagnosis process.

E. Removal from the Program

Currently, the Code makes no specific allowance for the situation where a youthful offender receives a second criminal offense. The practice is to remove a second offender from the facility and, effectively, from the program altogether, with the result that he does not receive ordinary parole consideration. At some point (usually shortly after receiving a second conviction) he is paroled to serve the second (fixed) term. No "method" for service of a second sentence is in existing Code language.

Likewise, under existing practice, a youthful offender exhibiting intractable behavior is removed from the facility and from the program entirely. His "immediate" parole eligibility and continuous evaluation could be lost, and ordinary review is not substituted. Under current practice he could potentially serve out the full three-year sentence in another facility.

VIII. STUDY DESIGN

The subcommittee reviewed the law governing the youthful offender program, and solicited information and testimony on the program in practice from the Department of Corrections and the Virginia Parole Board.

The subcommittee also engaged in an on-site inspection of the Youthful Offender Center at Southampton, as well as an inspection of the St. Bride's Correctional Center, which is the primary alternative facility for those individuals who would otherwise qualify, but are not sentenced to, or accepted into, the youthful offender program.

An analysis of existing law, and of the youthful offender program as it now operates, was conducted in conjunction with consideration of goals for the program. A review of objectives of the program has been made in determining what changes in the law and/or practice of the program are necessary to meet these objectives.

MEETINGS:

First Subcommittee Meeting	June 20, 1989
Second Subcommittee Meeting	July 27, 1989
Third Subcommittee Meeting	August 15, 1989
Fourth Subcommittee Meeting	September 19, 1989
Fifth Subcommittee Meeting	December 18, 1989

REPORTS:

Initial Staff Study	June 20, 1989
1st Interim Report	July 27, 1989
2nd Interim Report	August 15, 1989
Final Report to Subcommittee	September 19, 1989
Initial Report to Full Commission	October 17, 1989
Final Report to Full Commission	December 19, 1989

## IX. FINDINGS

### A. DOC and Parole Board joint review, and post sentence testing & diagnosis is effective as a jointly-conducted, single process.

An investigation into the administration of the Youthful Offender Act revealed that the separate processes of (1) joint review by the Virginia Parole Board and Department of Corrections required under Code of Virginia §19.2-311, and (2) the testing and diagnosis of sentenced inmates called for under §19.2-312, are presently being conducted as a single ongoing process. While this procedure could cloud the lines of responsibility of the reviewing parties, the Commission has determined that it is an efficient means for carrying out statutory duties and that all parties involved in the process find it to be most effective.

### B. Discretionary presentence testing and mandatory postsentence testing can effectively be accomplished with a single testing period prior to sentencing.

A presentence testing period presently allowed at the discretion of the sentencing judge pursuant to Code of Virginia §19.2-316 is conducted in essentially the same manner as testing required by §19.2-311 and §19.2-312 subsequent to sentencing. Thus, comparable test results could be achieved with a single test period. By conducting such testing prior to sentencing, violation of Court Rule 1:1 is avoided.

### C. Current practice potentially denies an ineligible offender appropriate parole review.

A youthful offender who loses his eligibility to continue to participate in the program by virtue of his intractable behavior or second conviction (or, as proposed, by voluntary withdrawal) often also loses all parole consideration and may serve more time than he would if appropriately reviewed. There is no Code provision to address this problem.

### D. There is no mechanism in the Code to accomodate a youthful offender who receives a second offense.

A second offender who is no longer eligible for the youthful offender program is not accomodated by current law. It is unclear 1) whether a second offense should be served concurrently or consecutively, 2) how parole time is to be calculated, or 3) when and by what mechanism a youthful offender sentence would be considered fully served.

### E. Other corrections facilities for housing inmates comparable to those at the Youthful Offender Center may offer more programs.

A tour and review of the Youthful Offender Center at the Southampton Correctional Center, and a similar tour and review of the facilities at St. Bride's Correctional Center (both used for individuals of comparable age and similar convictions), revealed that varying educational and vocational programs are available at each but that the greater number (and larger) of the programs are found at St. Bride's. Thus, inmates in the Youthful Offender Center may not be receiving educational and training benefits that are available at other corrections facilities which house similar offenders.

F. Success of the youthful offender program in rehabilitating cannot presently be determined.

The objective inherent in placing young people in the youthful offender program is rehabilitation. The hope is that with proper treatment and exposure to peers who are also found suitable for this program, offenders will be better equipped to reenter society in a productive and law abiding role. The Commission's investigation found, however, that a rate of recidivism for graduates of the program cannot be determined with present statistical data. A prime means for determining the success of the program (relative to normal incarceration), therefore, is not available.

X. RECOMMENDATIONS

The subcommittee studying the youthful offender program carefully considered the goals of the program, as reflected in the Youthful Offender Act, and the manner in which it is presently administered. At its meeting on December 18, 1989, the subcommittee unanimously adopted the following recommendations for presentation to the full Commission on December 19, 1989. (See Appendix F for proposed statutory language.)

A. Amendment to the Youthful Offender Act to accomodate those ineligible for the program.

The subcommittee recommended amending § 19.2-311 of the Code of Virginia to essentially codify existing practice with respect to treatment of second offenders and those offenders exhibiting intractable behavior. Presently, without guidance from the Code, an inmate found ineligible to continue as a youthful offender is removed by the Department of Corrections from the program entirely. As a consequence, continuous parole evaluation is often lost. The subcommittee recommended that, if ineligible, an offender would only lose his access to programs and not his eligibility for continuous parole evaluation. Thus, a second offender or an intractable offender (or one who voluntarily removes himself from the program) will not "fall into the crack."

Additionally, per the recommended amendments, an offender who receives a subsequent conviction would, upon parole at the discretion of the Parole Board, serve his second sentence consecutively with the first (youthful offender) sentence.

Another amendment recommended was to allow the offender to choose the program, or not, and to voluntarily withdraw. Under the latter circumstance he would still receive continuous parole evaluation under § 19.2-313.

B. Amendment to § 53.1-66 to define "Intractable Behavior."

To resolve any doubt the subcommittee recommended defining, in the Code, the meaning of "intractable behavior." (See Appendix F for definition.)

C. Amendment to the Virginia Code to permit housing of youthful offenders in any appropriate facility.

The subcommittee recommended amending §53.1-63 of the Code of Virginia to allow the housing of youths sentenced under the Youthful Offender Act at any state correctional facility found by the Board of Corrections to be suitable

and designated as such. (See Appendix F.) This clarifies allowance for women to be placed, likewise, at any suitable facility.

D. Amendment to the Virginia Code to require testing prior to sentence, and eliminate post-sentence testing.

The subcommittee recommended abolishing §19.2-312 of the Code of Virginia, requiring testing of persons already sentenced to the youthful offender program, and amending §19.2-311 to provide for a sixty-day period of mandatory testing and diagnosis of all convicted persons prior to their being sentenced to the program. (See Appendix F.) This removes problem or re-sentencing and violation of Court Rule 1:1 (21-day rule).

E. Administrative recommendation to track recidivism rates among inmates of discrete programs in the DOC.

The subcommittee recommended an administrative standard within the Virginia Department of Corrections requiring a regular and habitual process of tracking the rate of recidivism among inmates sentenced/assigned to the youthful offender program and other programs and institutions within that department.

XI. RESOURCES/ACKNOWLEDGEMENTS

The Commission greatly appreciates the assistance of the following in the conduct of this study:

- The Virginia Department of Corrections
  - Mr. Ed Morris
  - Mr. Forrest Powell
  - Mr. Mike Leininger
  
- The Virginia Parole Board
  - Mr. Frank Saunders, Member
  - Mr. John Brown, Member
  - Mr. Clarence Jackson, Chairman
  
- The Youthful Offender Center, Southampton Correctional Center
  - Mr. James Allen, Acting Warden
  
- The St. Bride's Correctional Center
  
- Virginia Attorney General's Office
  
- Virginia Department of Criminal Justice Services
  - Mr. Richard P. Kern

APPENDIX A



# COMMONWEALTH of VIRGINIA

## *Virginia Parole Board*

*6900 Atmore Drive*

*Richmond, Virginia 23225*

*(804) 674-3081*

CLARENCE L. JACKSON, JR.  
CHAIRMAN

LEWIS W. HURST  
VICE-CHAIRMAN

JOHN D. PARKER  
EXECUTIVE DIRECTOR

### BOARD MEMBERS

JOHN A. BROWN  
GEORGE M. HAMPTON, SR.  
LEWIS W. HURST  
CLARENCE L. JACKSON, JR.  
FRANK E. SAUNDERS

March 31, 1989

The Honorable Elmon T. Gray, Chairman  
Virginia State Crime Commission  
General Assembly Building  
P. O. Box 3-AG  
Richmond Virginia 23208

Dear Mr. Chairman:

Since the enactment of legislation creating the Youthful Offender Act, Code Section 19.2-311, many questions have been raised about the intent of statutory requirements and the correlative procedures for implementation. Also, because other sections of the Code control judicial decisions, Section 19.2-311 appears to conflict with those Sections.

The two primary agencies involved in carrying out the intent of Section 19.2-311, the Virginia Parole Board and the Department of Corrections, jointly concur that an impartial review of the code and related operating procedures should be conducted. Therefore, the Virginia Parole Board would like to request that the State Crime Commission conduct a study and review of the above mentioned statute. This request is being made after considerable assessment by the VPB and DOC that there does exist a number of inconsistencies in the interpretation and application of the statute.

The nature of these problems are many, however, to give the State Crime Commission an understanding of the complexity of these problems, I have outlined for your information the following examples:

- (1) Conflict in language in different sections of the Code makes it difficult to determine when the sentencing court's jurisdiction over the youthful offender ceases. For example, when an offender is not accepted into the Youthful Offender Program after a concurrent assessment between the VPE and



The Honorable Elmon T. Gray, Chairman  
Virginia State Crime Commission  
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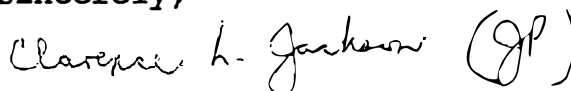
DOC, he is then redirected to the adult system. This practice is contrary to statutory provisions requiring that the offender be returned to the sentencing court when program acceptance is denied.

- (2) In some instances an offender sentenced under the Act may never leave the assessment component stage due to an initial screen-out at DOC's Reception Center.
- (3) There seems to be a statewide lack of knowledge and awareness of the provisions of the statute.

As I indicated, there are other problems associated with the Act that we feel should be addressed. Members of the Virginia Parole Board would like to meet with you and members of the Commission to outline the problem areas and offer any suggestions on how we think improvements could be made in the statute to make it a more meaningful application of the Youthful Offender Program as originally intended by the legislature.

Thank you for your consideration in this matter. We look forward to your response.

Sincerely,



Clarence L. Jackson  
Chairman

CLJJr:gbb

APPENDIX B

ARTICLE 2.

*Indeterminate Commitment.*

**§ 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 or which a jury has imposed in a jury trial, commit persons convicted in such cases 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.

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 certified for trial as an adult under the provisions of § 16.1-269 or § 16.1-272; and

2. Was convicted of an offense which is either (i) a felony not punishable as a Class 1 felony, 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 judgment of commitment, the Department of Corrections and the Parole Board shall forthwith review all aspects of the case, and if they concur that (i) such 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, then such person shall be forthwith so committed. In the event such concurrence is not reached, then such person shall be again brought before the court, which shall review the sentence previously imposed, and may reduce such sentence, or commit such person to the Department of Corrections or to a local detention facility to serve his sentence as the interests of justice may require. (Code 1950, § 19.1-295.1; 1966, c. 579; 1974, cc. 44, 45; 1975, c. 495; 1976, c. 498; 1980, c. 531; 1988, c. 38.)

**§ 19.2-315. Compliance with terms and conditions of parole; time on parole not counted as part of commitment period.** — Every person on parole under § 19.2-314 shall comply with such terms and conditions as may be prescribed by the Board according to § 53.1-157 and shall be subject to the penalties imposed by law for a violation of such terms and conditions. Notwithstanding any other provision of the Code, if parole is revoked as a result of any such violation, such person may be returned to the institution established under Article 4 (§ 53.1-63 et seq.) of Chapter 2 of Title 53.1 upon the direction of the Parole Board with the concurrence of the Department of Corrections, provided such person has not been convicted since his release on parole of an offense constituting a felony under the laws of the Commonwealth. Time on parole shall not be counted as part of the four-year period of commitment under this section. (Code 1950, § 19.1-295.5; 1966, c. 579; 1975, c. 495; 1984, c. 33.)

ARTICLE 4.

*State Facilities for Youthful Offenders.*

**§ 53.1-63. Department to establish facilities for persons committed under § 19.2-311 et seq.** — The Department shall establish, staff and maintain state correctional facilities for the rehabilitation, training and confinement of persons committed to the Department under the provisions of § 19.2-311 et seq. Persons admitted to these facilities shall be determined by the Department to have the potential for rehabilitation through confinement and treatment therein. (Code 1950, § 53-128.1; 1966, c. 482; 1974, cc. 44, 45; 1982, c. 636.)

**§ 53.1-64. Programs and facilities.** — The Department shall establish and maintain at each facility:

1. Programs for counseling, education and vocational training;
2. Buildings sufficient to ensure the secure confinement of persons admitted to the facility; and
3. Programs for the study, testing and diagnosis of the following persons:
  - a. Persons committed to the Department under the provisions of § 19.2-311 et seq. and confined at a youthful offender facility for a determination as to the likelihood of their benefitting from the program of such facility; and
  - b. Persons confined therein and confined elsewhere in the state corrections system under the indeterminate period of commitment authorized by § 19.2-311 et seq., to evaluate their progress periodically and to determine their readiness for release; and
  - c. Persons committed to the Department for diagnosis under the provisions of § 19.2-316 prior to a determination of punishment. (Code 1950, § 53-128.2; 1966, c. 482; 1982, c. 636.)

**§ 53.1-65. Consideration of report developed at diagnostic facilities.** — The Department shall give careful consideration to the report developed at the diagnostic facilities established under § 53.1-64 in determining whether persons committed to it under the provisions of § 19.2-311 et seq., are to be confined at a youthful offender facility or elsewhere in the state corrections system. (Code 1950, § 53-128.3; 1966, c. 482; 1982, c. 636.)

**§ 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 § 19.2-311 et seq., upon a finding by the Department that his intractable behavior indicates he will not benefit from the programs of a youthful offender facility. (Code 1950, § 53-128.4; 1966, c. 482; 1982, c. 636.)

**§ 53.1-67. Admission to facility; good conduct allowance restricted.** — In no case shall a person previously confined in a youthful offender facility, whether for a different or the same offense, be confined again in such a facility, except for the purposes of study, testing and diagnosis.

The provisions of §§ 53.1-191, 53.1-196, and 53.1-198 through 53.1-201 relating to good conduct credits and allowances and extraordinary service and the provisions of § 53.1-187 relating to credit for time served in a correctional facility or juvenile detention facility shall not apply to persons sentenced under § 19.2-311 for a crime committed on or after July 1, 1983. Acts performed by such persons which would earn credit for them under § 53.1-191, if it were applicable, shall be noted on their record by the authorities of the facility. (Code 1950, § 53-128.5; 1966, c. 482; 1982, c. 636; 1983, c. 606; 1984, c. 313.)

## PART ONE

### General Rules Applicable to All Proceedings

- Rule 1:1. Finality of Judgments, Orders and Decrees.
- Rule 1:2. Venue in Criminal Cases.
- Rule 1:3. Reporters and Transcripts of Proceedings in Courts.
- Rule 1:4. General Provisions as to Pleadings.
- Rule 1:4A. Special Rule for Pleadings in General District Courts. (Repealed.)
- Rule 1:5. Counsel.
- Rule 1:6. Service of Notice to Take Depositions. (Rescinded, Reserved for Future Use.)
- Rule 1:7. Computation of Time.
- Rule 1:8. Amendments.
- Rule 1:9. Discretion of Court.
- Rule 1:10. Verification.
- Rule 1:11. Striking the Evidence.
- Rule 1:12. Copies of Pleadings and Requests for Subpoenas Duces Tecum to Be Furnished.
- Rule 1:13. Endorsements.
- Rule 1:14. Regulation of Conduct in the Courtroom.
- Rule 1:15. Local Rules of Court.  
Circuit Courts of Virginia — Times for the Commencement of the Regular Terms.
- Rule 1:16. Size of Paper.
- Appendix of Forms.

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**Editor's note.** — Part One became effective March 1, 1972. The statements of the source appearing after the several rules in this part, which were prepared by a subcommittee and presented to the Judicial Council, are not part of the Rules as adopted by the Supreme Court of Virginia.

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#### Rule 1:1. Finality of Judgments, Orders and Decrees.

All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, shall not extend the time limits hereinafter prescribed for applying for a writ of error. The date of entry of any final judgment, order, or decree shall be the date the judgment, order, or decree is signed by the judge.

APPENDIX C

NUMBER OF YOUTHFUL OFFENDER SENTENCES BY SEX

1985-1989

	1985 <sup>a</sup>	1986	1987	1988	1989 <sup>b</sup>
Male	103 94.5%	165 98.8%	157 97.5%	117 100.0%	9 100.0%
Female	6 5.5%	2 1.2%	4 2.5%	0 0.0%	0 0.0%
	109	167	161	117	9

<sup>a</sup> Based on approximately eleven months of data.

<sup>b</sup> Based on approximately one month of data.

\* Data source: Pre/Post Sentence Investigation database.

(Information provided by the Virginia Department of Criminal Justice Services)

**APPENDIX D**



1989 SESSION

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HOUSE BILL NO. 1558  
Offered January 23, 1989

A BILL to amend and reenact § 19.2-311 of the Code of Virginia, relating to youthful offenders.

Patron—Robinson

Referred to the Committee for Courts of Justice

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 or which a jury has imposed in a jury trial, commit persons convicted in such cases 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.

B. The provisions of subsection A of this section shall be applicable to first convictions in which the person convicted:

1. (i) Committed the a first offense of which convicted after becoming eighteen but before becoming twenty- one five years of age, or (ii) committed a second or subsequent offense of which convicted after becoming eighteen but before becoming twenty-three years of age, or (iii) was a juvenile certified for trial as an adult under the provisions of § 16.1-269 or § 16.1-272; and

2. Was convicted of an offense which is either (i) a felony not punishable as a Class 1 felony, 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 judgment of commitment, the Department of Corrections and the Parole Board shall forthwith review all aspects of the case, and if they concur that (i) such 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, then such person shall be forthwith so committed. In the event such concurrence is not reached, then such person shall be again brought before the court, which shall review the sentence previously imposed, and may reduce such sentence, or commit such person to the Department of Corrections or to a local detention facility to serve his sentence as the interests of justice may require.

**APPENDIX E**

APPENDIX E

Comparison of Southampton and St. Bride's Correctional Centers

<u>Factors for Comparison</u>	<u>Youthful Offender Center Southampton Corr. Center</u>	<u>St. Bride's Corr. Center</u>
Number of Inmates	Capacity - 100 Population - 95 - 100	Capacity - 455 Population - 450 - 455
Type of Inmates	First offenders between the age of 18 and 21. Program is voluntary.	First offenders between the age of 18 and 25.
Recidivism Rate Among First Offenders	Information unavailable.	Information unavailable.
Percentage of Population in Education or Trade Programs	100% classroom education is mandatory for all inmates.	Approx. 60% to 70% participation is voluntary.
Number of Trade Programs Available to Inmates	Four trade programs are available to train inmates. Participation is voluntary.	Eight trade programs are available to train inmates. Participation is voluntary.
Percentage of Inmates Receiving GED's by Year	1984-85 - 38% 1985-86 - 29% 1986-87 - 44% 1987-88 - 26% 1988-present 25%	1984-85 - 12.0% 1985-86 - 13.5% 1986-87 - 13.5% 1987-88 - 13.5% 1988-present 6.0%

APPENDIX F

2 SENATE BILL NO. .... HOUSE BILL NO. ....

3 A BILL to amend and reenact §§ 19.2-311, 19.2-316, 53.1-63, 53.1-64,  
4 53.1-66 and 53.1-67 of the Code of Virginia and to repeal §  
5 19.2-312 of the Code of Virginia, relating to the youthful  
6 offender program.

7

8 Be it enacted by the General Assembly of Virginia:

9 1. That §§ 19.2-311, 19.2-316, 53.1-63, 53.1-64, 53.1-66 and 53.1-67  
10 of the Code of Virginia are amended and reenacted as follows:

11 § 19.2-311. Indeterminate commitment to Department of  
12 Corrections in certain cases; duration and character of commitment;  
13 concurrence by Department.--A. The judge, after a finding of guilt,  
14 when fixing punishment in those cases specifically enumerated in  
15 subsection B of this section, may, in his discretion, in lieu of  
16 imposing any other penalty provided by law ~~or which a jury has imposed~~  
17 ~~in a jury trial~~ and, with consent of the person convicted, commit  
18 ~~persons convicted in such cases~~ such person for a period of four  
19 years, which commitment shall be indeterminate in character. Subject  
20 to the provisions of subsection C hereof, such persons shall be  
21 committed to the Department of Corrections for initial confinement for  
22 a period not to exceed three years. Such confinement shall be followed  
23 by at least one year of supervisory parole, conditioned on good  
24 behavior, but such parole period shall not, in any case, continue  
25 beyond the four-year period. The sentence of indeterminate commitment  
26 and eligibility for continuous evaluation and parole under § 19.2-313

1 shall remain in effect but eligibility for use of programs and  
2 facilities specified in § 53.1-64 shall lapse if such person (i)  
3 voluntarily withdraws from the youthful offender program, (ii)  
4 exhibits intractable behavior as defined in § 53.1-66, or (iii) is  
5 convicted of a second criminal offense. Any sentence imposed for a  
6 second criminal offense shall run consecutively with the indeterminate  
7 sentence.

8 B. The provisions of subsection A of this section shall be  
9 applicable to first convictions in which the person convicted:

10 1. Committed the offense of which convicted after becoming  
11 eighteen but before becoming twenty-one years of age, or was a  
12 juvenile certified for trial as an adult under the provisions of §  
13 16.1-269 or § 16.1-272; and

14 2. Was convicted of an offense which is either (i) a felony not  
15 punishable as a Class 1 felony, or (ii) a misdemeanor involving injurv  
16 to a person or damage to or destruction of property; and

17 3. Is considered by the judge to be capable of returning to  
18 society as a productive citizen following a reasonable amount of  
19 rehabilitation.

20 C. Subsequent to a finding of guilt and judgment of ~~commitment~~  
21 prior to fixing punishment , the Department of Corrections and the  
22 Parole Board shall ~~forthwith~~ , concurrently with the evaluation  
23 required by § 19.2-316, review all aspects of the case , ~~and if they~~  
24 ~~concur that~~ to determine whether (i) such indeterminate sentence of  
25 commitment is in the best interest of the Commonwealth and of the  
26 person convicted and (ii) facilities are available for the confinement  
27 of such person , ~~then~~ . After the review such person shall be  
28 ~~forthwith so committed.~~ In the event such concurrence is not reached

1 then such person shall be again brought before the court, which shall  
2 review the sentence previously imposed, and may reduce such sentence,  
3 or commit such person to the Department of Corrections or to a local  
4 detention facility to serve his sentence as the interests of justice  
5 may require findings of the Department and the Parole Board. The  
6 court may impose a sentence as authorized in subsection A, or any  
7 other penalty provided by law .

8 § 19.2-316. Evaluation and report prior to determining  
9 punishment.-- The court, in its discretion, may After a finding of  
10 guilt but prior to determining fixing punishment as provided for in §  
11 19.2-311 or other applicable provisions of law, the court shall  
12 commit, for a period not to exceed sixty days, the person convicted to  
13 the diagnostic component of those facilities of the institution  
14 established under Article 4 (§ 53.1-63 et seq.) of Chapter 2 of Title  
15 53.1 for full and adequate study, testing, diagnosis, evaluation and  
16 report on the person's potential for rehabilitation through  
17 confinement and treatment in such facilities . If additional  
18 evaluation is deemed advisable, the Department of Corrections may  
19 apply to the court for an extension of such commitment for a period of  
20 up to sixty days. If the Director of the Department of Corrections  
21 determines such person should be confined in a facility other than one  
22 established under Article 4 (§ 53.1-63 et seq.) of Chapter 2 of Title  
23 53.1, a written report giving the reasons for such decision shall be  
24 submitted to the sentencing court. The court shall not be bound by  
25 such written report in the matter of determining punishment.  
26 Additionally, the person may be committed or transferred to a mental  
27 hospital or like institution, as provided by law, during such  
28 sixty-day period.

1           § 53.1-63. Department to establish facilities for persons  
2 committed under § 19.2-311 et seq.--The Department shall establish,  
3 staff and maintain , at any state correctional facilities facility  
4 designated by the Board, programs and housing for the rehabilitation,  
5 training and confinement of persons committed to the Department under  
6 the provisions of § 19.2-311 et seq. Persons admitted to these  
7 facilities shall be determined by the Department to have the potential  
8 for rehabilitation through confinement and treatment therein.

9           § 53.1-64. Programs and facilities.--The Department shall  
10 establish and maintain ~~at~~ within each facility -

11           ~~1-~~ Programs programs for counseling, education and vocational  
12 training;

13           ~~2-~~ Buildings buildings sufficient to ensure the secure  
14 confinement of persons admitted to the facility; and

15           ~~3-~~ Programs programs in at least one such facility for the  
16 study, testing and diagnosis of the following persons:

17           a- 1. Persons committed to the Department for diagnosis and  
18 evaluation under the provisions of § ~~19.2-311~~ et seq- and confined at  
19 a ~~youthful offender facility~~ § 19.2-316 for a determination as to the  
20 likelihood of their benefitting from the program of such facility; and

21           b- 2. Persons confined ~~therein~~ and ~~confined elsewhere~~ in the  
22 state corrections system under the indeterminate period of commitment  
23 authorized by § 19.2-311 et seq., to evaluate their progress  
24 periodically and to determine their readiness for release ; and

25           c- Persons committed to the Department for diagnosis under the  
26 provisions of § ~~19.2-316~~ prior to a determination of punishment .

27           § 53.1-66. Transfer of prisoners to other facilities.--Any  
28 person confined by the Department in a facility established by this



1 chapter may be transferred from such facility to other facilities in  
2 the state corrections system for the remainder of the period of  
3 commitment under § 19.2-311 et seq., upon a written finding by the  
4 Department submitted to the sentencing court that ~~his~~ the person has  
5 exhibited intractable behavior ~~indicates he will not benefit from the~~  
6 ~~programs of a youthful offender facility~~ .

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

12 § 53.1-67. Admission to facility; good conduct allowance  
13 restricted.--In no case shall a person previously confined in a  
14 youthful offender facility, whether for a different or the same  
15 offense, be confined again in such a facility, except for the purposes  
16 of study, testing and diagnosis.

17 The provisions of §§ 53.1-191, 53.1-196, and 53.1-198 through  
18 53.1-201 relating to good conduct credits and allowances and  
19 extraordinary service and the provisions of § 53.1-187 relating to  
20 credit for time served in a correctional facility or juvenile  
21 detention facility shall not apply to persons sentenced to an  
22 indeterminate sentence under § 19.2-311 for a crime committed on or  
23 after July 1, 1983. Acts performed by such persons which would earn  
24 credit for them under § 53.1-191, if it were applicable, shall be  
25 noted on their record by the authorities of the facility.

26 2. That § 19.2-312 of the Code of Virginia is repealed.

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