

SB 319

FILED

2004 APR -5 P 3:39

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2004

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**ENROLLED**

SENATE BILL NO. 319

(By Senator Love, et al )

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PASSED March 13, 2004

In Effect 90 days from Passage

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2004 APR -5 P 3: 41

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**Senate Bill No. 319**

(BY SENATORS LOVE, HUNTER, WHITE, MCKENZIE AND ROWE)

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[Passed March 13, 2004; in effect ninety days from passage.]

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AN ACT to amend and reenact §25-4-6 of the code of West Virginia, 1931, as amended, relating to young adult offenders found unfit to remain at a center for young adult offenders; specifying entitlement to a hearing before the committing court; providing standard of review; and allowing reliance on record established at the center under specified circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §25-4-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.**

**§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.**

- 1 The judge of any court with original criminal jurisdic-
- 2 tion may suspend the imposition of sentence of any young

3 adult, as defined in this section, convicted of or pleading  
4 guilty to a felony offense, other than an offense punishable  
5 by life imprisonment, including, but not limited to, felony  
6 violations of the provisions of chapter seventeen-c of this  
7 code, who has attained his or her eighteenth birthday but  
8 has not reached his or her twenty-third birthday at the  
9 time of the sentencing by the court and commit the young  
10 adult to the custody of the West Virginia commissioner of  
11 corrections to be assigned to a center. Young adult  
12 offenders who have previously been committed to a young  
13 adult offender center are not eligible for commitment to  
14 this program. The period of confinement in the center  
15 shall be for a period of not less than six months or longer  
16 to successfully complete the program requirements set by  
17 the warden, but in any event the period of confinement  
18 may not exceed two years. The court shall order a  
19 presentence investigation to be conducted and provide the  
20 warden with a copy of the presentence investigation  
21 report, along with the commitment order.

22 If, in the opinion of the warden, the young adult offender  
23 proves to be an unfit person to remain in the center, the  
24 offender shall be returned to the committing court to be  
25 dealt with further according to law. The offender is  
26 entitled to a hearing before the committing court to review  
27 the warden's determination. The standard for review is  
28 whether the warden, considering the offender's overall  
29 record at the center and the offender's compliance with  
30 the center's rules, regulations, programs and services,  
31 abused his or her discretion in determining that the  
32 offender is an unfit person to remain in the center. At the  
33 hearing before the committing court, the state need not  
34 offer independent proof of the offender's disciplinary  
35 infractions contained in the record of the center, when  
36 opportunity for an administrative hearing on those  
37 infractions was previously made available at the institu-  
38 tion. In the event that the court upholds the warden's  
39 determination, the court may sentence the offender for the  
40 crime for which the offender was convicted. In his or her

41 discretion, the judge may allow the defendant credit on the  
42 sentence for time the offender spent in the center.

43 A young adult offender shall be returned to the jurisdic-  
44 tion of the court which originally committed the offender  
45 when, in the opinion of the warden, the young adult  
46 offender has satisfactorily completed the center training  
47 program. The offender is then eligible for probation for  
48 the offense with which the offender is charged and the  
49 judge of the court shall immediately place the offender on  
50 probation. In the event the offender's probation is subse-  
51 quently revoked, the judge shall impose the sentence the  
52 young adult offender would have originally received had  
53 the offender not been committed to the center and subse-  
54 quently placed on probation. The court shall, however,  
55 give the offender credit on his or her sentence for the time  
56 spent in the center.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 5th  
Day of April, 2004.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

DATE 1/22/04

TIME 3:50 pm