

005537608

HOUSE BILL NO. 202

Offered January 12, 2000

A *BILL to amend and reenact §§ 18.2-55, 18.2-57.3, 19.2-303.3, 53.1-180, 53.1-181, 53.1-182, 53.1-182.1, 53.1-183, 53.1-184, 53.1-185, 53.1-185.1, 53.1-185.2, and 53.1-185.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 53.1-182.1:1, relating to the Comprehensive Community Corrections Act for Local-Responsible Offenders; bodily injury; persons charge with assault and battery against a family member; penalty.*

Patron—Almand

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-55, 18.2-57.3, 19.2-303.3, 53.1-180, 53.1-181, 53.1-182, 53.1-182.1, 53.1-183, 53.1-184, 53.1-185, 53.1-185.1, 53.1-185.2, and 53.1-185.3 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 53.1-182.1:1 as follows:

§ 18.2-55. Bodily injuries caused by accused persons, pretrial defendants, prisoners, state and local probationers or parolees.

A. It shall be unlawful for a person confined in a state, local or regional correctional facility as defined in § 53.1-1; in a secure facility or detention home as defined in § 16.1-228 or in any facility designed for the secure detention of juveniles; or while in the custody of an employee thereof to knowingly and willfully inflict bodily injury on:

1. An employee thereof, or
2. Any other person lawfully admitted to such facility, except another prisoner or person held in legal custody, or
3. Any person who is supervising or working with prisoners or persons held in legal custody, or
4. Any such employee or other person while such prisoner or person held in legal custody is committing any act in violation of § 53.1-203.

B. It shall be unlawful for a probationer or parolee, under the supervision of a probation or parole officer as defined in § 16.1-237 or § 53.1-145, to knowingly and willfully inflict bodily injury on such officer while in the performance of such officer's duty.

C. *It shall be unlawful for any accused person, pretrial defendant or probationer being investigated by, or under the supervision of, a local pretrial services officer or local probation officer who has taken an oath of office, to knowingly and willingly inflict bodily injury on such officer or person while in the performance of such officer's or person's duty.*

Any person violating any provision of this section shall be guilty of a Class 5 felony.

§ 18.2-57.3. Persons charged with first offense of assault and battery against a family or household member may be placed on probation; conditions; screening, evaluation, testing, education and treatment programs; costs and fees; violations; discharge.

When any person *age eighteen or older* who has not previously been convicted of any offense under this article or under any statute of the United States or of any state or any ordinance of any local government relating to assault and battery against a family or household member or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to a violation of § 18.2-57.2, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on *local probation upon terms and conditions. If any city, county or combination thereof, has established or operates a local community-based probation program pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1, probation supervision shall be provided by the program.*

As a term or condition, the court shall require the accused to be evaluated and, *based on the results of screening, assessment, evaluation, and testing, to enter a an education or treatment and/or education program, if available, such as, in the opinion of the court, may be best suited to the needs of the accused. The program may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide.*

The court shall require the person entering such a *education or treatment* program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, evaluation, testing, *education* and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

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60 As a condition of *local* probation, the court shall require the accused to successfully complete all
61 treatment and/or education programs required and to be of good behavior for a period of not less than
62 two years *following the completion of local probation supervision*.

63 The court shall, unless done at arrest, order the accused to report to the original arresting
64 law-enforcement agency to submit to fingerprinting.

65 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
66 otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person
67 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without
68 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent
69 proceedings. As such, no charges dismissed pursuant to this section shall be eligible for expungement
70 under § 19.2-392.2 *for a period of two years following the completion of local probation supervision*.

71 Notwithstanding any other provision of this section, whenever a court places an individual on
72 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
73 for purposes of § 18.2-308.

74 § 19.2-303.3. Sentence to local community-based probation program eligibility for participation;
75 evaluation; sentencing; withdrawal or removal from program; payment for costs.

76 A. A Any defendant who is (i) *charged with or convicted on or after July 1, 1995, of a*
77 *misdemeanor or a nonviolent felony not charged with a felony act of violence* as defined in
78 ~~§ 19.2-316.1~~ § 19.2-297.1, ~~for and~~ for which the court may impose a sentence to jail sentence, or any
79 sentence that would result in confinement in a local or regional jail; (ii) no younger than eighteen years
80 of age or is considered an adult at the time of conviction; and (iii) who meets other eligibility criteria
81 pursuant to this section and § 53.1-180 may be sentenced to a local community-based ~~corrections~~
82 probation program established pursuant to § 53.1-181 by the local governing bodies within that judicial
83 district or circuit.

84 B. ~~Prior to~~ Following a hearing where the facts would justify a finding of guilt, or conviction, or at
85 the time of sentencing, the court may (i) *defer the proceeding or (ii) suspend the imposition or*
86 *execution of sentence and* order the defendant placed in ~~the~~ a local community-based ~~corrections~~
87 probation program pursuant to § 53.1-181 upon a determination by the court that the defendant may
88 benefit from the program and is capable of returning to society as a productive citizen with a reasonable
89 amount of supervision and intervention including ~~program components~~ programs and services set forth
90 in § 53.1-182.1. ~~All or part of~~ Any placement on probation following a proceeding that has been
91 deferred or following any sentence imposed ~~may be that has been suspended, shall be~~ conditioned upon
92 the defendant's successful completion of any ~~community-based corrections~~ program established pursuant
93 to § 53.1-181. The court may impose such other terms and conditions of supervision as it deems
94 appropriate, including that the defendant abide by any additional requirements of supervision imposed or
95 established by the program during the period of probation supervision.

96 C. ~~Upon the defendant's~~ Any officer of a local probation program established or operated pursuant
97 to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 53.1-180 et seq.)
98 may seek a warrant or *capias* from any judicial officer for the arrest of any person on probation and
99 under its supervision for removal from the program by the Comprehensive Community Corrections Act
100 for Local Responsible Offenders Program (§ 53.1-180 et seq.) for (i) intractable behavior; or (ii) refusal
101 to comply with the terms and conditions imposed by the court; (iii) refusal to comply with the
102 requirements of local probation supervision established by the program; or (iv) the commission of a new
103 offense while on local probation and under program supervision. Upon arrest, the defendant shall be
104 brought before the court for a hearing. Upon finding that the defendant exhibited intractable behavior as
105 defined herein, or refused to comply with terms and conditions imposed, the court may revoke all or
106 part of the suspended sentence and supervision, and commit the defendant to serve whatever sentence
107 was originally imposed or impose such other terms and conditions of supervision as it deems
108 appropriate. "Intractable behavior" is that behavior which, in the determination of the court indicates a
109 defendant's unwillingness or inability to conform his behavior to that which is necessary for successful
110 completion of the program or that the defendant's behavior is so disruptive as to threaten the successful
111 completion of the program by other participants.

112 D. The court may order a defendant sentenced pursuant to this section to pay an amount to defray
113 the cost of the services received in accordance with subsection D of § 53.1-185.2.

114 § 53.1-180. Purpose.

115 It is the purpose of this article to enable any city, county or combination thereof to develop, establish
116 and maintain local community-based ~~corrections~~ probation programs to provide the judicial system with
117 sentencing alternatives for certain misdemeanants or persons *not charged with or convicted of*
118 ~~nonviolent felonies~~ felony acts of violence, as defined in ~~§ 19.2-316.1~~ § 19.2-297.1 and sentenced
119 pursuant to § 19.2-303.3, for whom the court may impose a jail sentence, or any sentence that would
120 result in confinement in a local or regional jail, and who may require less than institutional custody.

121 The article shall be interpreted and construed so as to effect the following purposes:

1. To allow individual cities, counties, or combinations thereof greater flexibility and involvement in responding to the problem of crime in their communities;

2. To provide more effective protection of society and to promote efficiency and economy in the delivery of correctional services;

3. To provide increased opportunities for offenders to make restitution to victims of crimes through financial reimbursement or community service;

4. To permit cities, counties or combinations thereof to operate and utilize *local community-based probation* programs and services specifically designed to meet the rehabilitative needs of selected offenders; and

5. To provide appropriate post-sentencing alternatives in localities for certain offenders with the goal of reducing the incidence of repeat offenders.

§ 53.1-181. Establishment of program; ~~use of supervised probation not to be decreased.~~

To facilitate local involvement and flexibility in responding to the problem of crime in their communities and to permit locally designed programs which will fit its needs, any city, county or combination thereof may, and any city, county or combination thereof which is required by § 53.1-82.1 to file a community-based corrections plan shall, establish a system of community-based services pursuant to this article. This system is to provide alternative programs for ~~those defendants and~~ offenders who, *pursuant to § 19.2-303.3*, are convicted, ~~and sentenced by, or receive and placed on~~ *probation* services through a court and who are considered suitable candidates for programs which require less than incarceration in a local correctional facility. Such programs and services may be provided by qualified public agencies or private agencies pursuant to appropriate contracts.

§ 53.1-182. Board to prescribe standards; ~~biennial~~ *criminal justice* plan.

The Board of Criminal Justice Services shall approve standards as prescribed by the Department of Criminal Justice Services for the development, implementation, operation and evaluation of *local community-based probation* programs, services and facilities authorized by this article. Any city, county or combination thereof which establishes programs and provides services pursuant to this article shall submit a ~~biennial~~ *criminal justice* plan to the Department of Criminal Justice Services for review and approval.

§ 53.1-182.1. Mandated services; optional programs.

Any city, county or combination thereof which elects or is required to establish a *local community-based corrections probation* program pursuant to this article shall provide to the judicial system the following programs and services *as components of local probation supervision*: community service; home incarceration with or without electronic monitoring; electronic monitoring; ~~probation supervision~~; and substance abuse *screening*, assessment, testing and treatment. Additional programs and services, including, but not limited to, local day reporting center programs and services, local halfway house programs and services for the temporary care of adults placed on probation, *local drug court programs and services, and law enforcement diversion into and public inebriate diversion programs* ~~detoxification centers, as defined in §§ 9-173.1, 9-173.2 and 18.2-388~~, may be established by the city, county or combination thereof.

§ 53.1-182.1:1. Form of oath of office for local probation officers.

Every local probation officer who is an employee of a local community-based probation agency, established by any city, county or combination thereof, or operated pursuant to Article 2 (§ 53.1-180 *et seq.*) of Chapter 5 of Title 53.1, that provides probation and related services pursuant to the requirement of the Comprehensive Community Corrections Act for Local-Responsible Offenders, shall take an oath of office as prescribed in § 49-1 before entering the duties of his office. The oath of office shall be taken before any general district or circuit court judge in any city or county that has established services for the judicial system pursuant to this article.

§ 53.1-183. Community criminal justice boards.

Each county or city or combination thereof developing and establishing a ~~community corrections~~ *local pretrial services or a community-based* program pursuant to the provisions of this article shall establish a community criminal justice board. Each county and city participating in a ~~community corrections~~ *local pretrial or community-based probation* program shall be represented on the community criminal justice board. In the event that one county or city appropriates funds to the program as part of a multijurisdictional effort, any other participating county or city shall be considered to be participating in a program if such locality appropriates funds to the program. Appointments to the board shall be made by each local governing body. In cases of multijurisdictional participation, unless otherwise agreed upon, each participating city or county shall have an equal number of appointments. Boards shall be limited to ~~fifteen members, except in cases of multijurisdictional boards which shall be limited to twenty members.~~ *the number of members established by resolution or ordinance of each participating jurisdiction.* Each board shall include, *at a minimum*, the following *mandatory members: a member from each governing body or a city or county manager, county administrator or executive, or assistant or*

183 *deputy appointed by the governing body: a judge of the general district court; a circuit court judge; a*
184 *juvenile and domestic relations district court judge; a chief magistrate; one chief of police or the sheriff*
185 *in a jurisdiction not served by a police department to represent law enforcement; an attorney for the*
186 *Commonwealth; a public defender, or an attorney who is experienced in the defense of criminal matters;*
187 *a sheriff or the regional jail administrator responsible for jails serving those jurisdictions involved in the*
188 *local pretrial services and community-based corrections probation program; a local educator; and a*
189 *community services board administrator.*

190 § 53.1-184. Withdrawal from program.

191 Any participating city or county may, at the beginning of any calendar quarter, by ordinance or
192 resolution of its governing authority, notify the Director of the Department of Criminal Justice Services
193 *and, in the case of multi-jurisdictional programs, the other member jurisdictions,* of its intention to
194 withdraw from the ~~community corrections~~ *local community-based probation* program. Such withdrawal
195 shall be effective as of the last day of the quarter in which such notice is given.

196 § 53.1-185. Responsibilities of community criminal justice boards.

197 On behalf of the counties, cities, or combinations thereof which they represent, the community
198 criminal justice boards shall have the responsibility to:

199 1. ~~Provide for the purchase,~~ *Advise on the development and operation of community local pretrial*
200 *services and community-based probation programs; and services pursuant to § 19.2-152.2 and*
201 *§ 53.1-182.1; and facilities for use by the courts in diverting offenders from local correctional facility*
202 *placements;*

203 2. Assist community agencies and organizations in establishing and modifying programs and services
204 for offenders on the basis of an objective assessment of the community's needs and resources;

205 3. Evaluate and monitor community programs, services and facilities to determine their impact on
206 offenders;

207 4. Develop and amend the ~~community corrections plan~~ *the criminal justice plan* in accordance with
208 guidelines and standards set forth by the Department of Criminal Justice Services *and oversee the*
209 *development and amendment of the community-based corrections plan as required by § 53.1-82.1* for
210 approval by participating local governing bodies; ~~and~~

211 5. ~~Do all things necessary or convenient to carry out the responsibilities expressly given in this~~
212 ~~article.~~ *Review the submission of all criminal justice grants regardless of the source of funding;*

213 6. *Facilitate local involvement and flexibility in responding to the problem of crime in their*
214 *communities; and*

215 7. *Do all things necessary or convenient to carry out the responsibilities expressly given in this*
216 *article.*

217 § 53.1-185.1. Eligibility to participate.

218 A. Any city, county, or combination thereof, which elects to, or is required to establish programs
219 shall participate in a local community-based probation program by ordinance or resolution of its
220 governing authority. In cases of multi-jurisdictional participation, each ordinance or resolution shall
221 identify the chosen administrator and fiscal agent as set forth in § 53.1-185.3. Such ordinances or
222 resolutions shall be provided to the Director of the Department of Criminal Justice Services, regardless
223 of funding source for the established programs.

224 B. Any ~~community corrections~~ *local community-based probation* program established pursuant to this
225 article shall be available as a sentencing alternative for persons sentenced to incarceration in a local
226 correctional facility or who otherwise would be sentenced to incarceration *and who would have served*
227 *their sentence* in a local or regional correctional facility.

228 § 53.1-185.2. Funding; failure to comply; prohibited use of funds.

229 A. Counties and cities shall be required to establish a community corrections program under this
230 article only to the extent funded by the Commonwealth through the general appropriation act.

231 B. The Department of Criminal Justice Services shall periodically review each program established
232 under this article to determine compliance with the submitted plan and operating standards. If the
233 Department of Criminal Justice Services determines that a program is not in substantial compliance with
234 the submitted plan or standards, the Department of Criminal Justice Services may suspend all or any
235 portion of financial aid made available to the locality for purposes of this article until there is
236 compliance.

237 C. Funding shall be used for the provision of services and operation of programs and facilities but
238 shall not be used for capital expenditures.

239 D. The Department of Criminal Justice Services, in conjunction with local boards, shall establish a
240 statewide system of supervision and intervention fees to be paid by offenders participating in programs
241 established under this article for reimbursement towards the costs of their supervision.

242 E. Any supervision or intervention fees collected by local programs established under this article
243 shall be retained by the locality serving as fiscal agent and shall be utilized *solely* for program
244 expansion and program development, or to supplant local costs of the program operation. Any program

collecting such fees shall keep records of the collected fees, report the amounts to the locality serving as fiscal agent and make all records available to the community criminal justice board. Such fees shall be in addition to ~~those any other imposed pursuant to § 53.1-150~~ on a defendant or offender as a condition of a deferred proceeding, conviction or sentencing by a court as required by general law.

§ 53.1-185.3. City or county to act as administrator and fiscal agent.

~~Each community criminal justice board~~ Any single participating city or county shall act as the administrator and fiscal agent for the funds awarded by purposes for implementing a local community-based probation program. In cases of multi-jurisdictional participation, the governing authorities of the participating localities shall select a one of the participating city or county, cities or counties, with its consent, to act as administrator and fiscal agent for the funds awarded for purposes of implementing the ~~community corrections~~ local community-based probation program on behalf of the participating jurisdictions.

The participating city or county acting as administrator and fiscal agent pursuant to this section may be reimbursed for the actual costs associated with the implementation of the ~~community corrections~~ local community-based probation program, including fiscal administration, accounting, payroll services, financial reporting, and auditing. Any costs must be approved by the community criminal justice board and reimbursed from those funds received for the operation of the community corrections program, and may not exceed one percent of those funds received in any single fiscal year.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 in FY 2010.