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HOUSE BILL NO. 202

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on March 1, 2000)

(Patron Prior to Substitute—Delegate Almand)

A *BILL to amend and reenact §§ 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 sections numbered 19.2-152.4:1 and 53.1-182.1:1, relating to the Comprehensive Community Corrections Act for Local-Responsible Offenders; bodily injury; persons charged with assault and battery against a family member; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 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 sections numbered 19.2-152.4:1 and 53.1-182.1:1 as follows:

§ 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 probation upon terms and conditions.

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 ~~an~~ *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 ~~an~~ *an 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.

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

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

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

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

§ 19.2-152.4:1. *Form of oath of office for local pretrial services officer; authorization to seek capias or warrant.*

Every pretrial services officer who is an employee of a local pretrial services agency established by any city, county or combination thereof or operated pursuant to this article shall take an oath of office as prescribed in § 49-1 and to provide services pursuant to the requirements of this article before entering the duties of his office. The oath of office shall be taken before any general district or circuit court judge in any county or city which has established services for use by judicial officers pursuant to this article.

In addition, any officer of a pretrial services agency established or operated pursuant to this article may seek a warrant or capias from any judicial officer for the arrest of any person under the agency's

60 custody and supervision for failure to comply with any conditions of release imposed by a judicial
61 officer, for failure to comply with the conditions of pretrial supervision as established by a pretrial
62 services agency, or when there is reason to believe that the person will fail to appear, will leave, or has
63 left the jurisdiction to avoid prosecution.

64 § 19.2-303.3. Sentence to local community-based probation program eligibility for participation;
65 evaluation; sentencing; withdrawal or removal from program; payment for costs.

66 A. A Any defendant who is (i) charged with or convicted on or after July 1, 1995, of a
67 misdemeanor or a ~~nonviolent felony~~ not charged with a felony act of violence as defined in ~~§ 19.2-316.1~~
68 § 19.2-297.1, ~~for~~ and for which the court may impose a sentence to jail sentence, or any sentence that
69 would result in confinement in a local or regional jail; (ii) no younger than eighteen years of age or is
70 considered an adult at the time of conviction; and (iii) who meets other eligibility criteria pursuant to
71 this section and § 53.1-180 may be sentenced to a local community-based ~~corrections~~ probation program
72 established pursuant to § 53.1-181 by the local governing bodies within that judicial district or circuit.

73 B. Prior to or at the time of sentencing, the court may order the defendant placed in ~~the~~ a local
74 community-based ~~corrections~~ probation program pursuant to § 53.1-181 upon a determination by the
75 court that the defendant may benefit from the program and is capable of returning to society as a
76 productive citizen with a reasonable amount of supervision and intervention including ~~program~~
77 ~~components~~ programs and services set forth in § 53.1-182.1. All or part of any sentence imposed may
78 be that has been suspended, shall be conditioned upon the defendant's successful completion of any
79 community-based ~~corrections~~ program established pursuant to § 53.1-181. The court may impose such
80 other terms and conditions of supervision as it deems appropriate, including that the defendant abide by
81 any additional requirements of supervision imposed or established by the program during the period of
82 probation supervision.

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

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

101 § 53.1-180. Purpose.

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

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

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

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

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

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

118 5. To provide appropriate postsentencing alternatives in localities for certain offenders with the goal
119 of reducing the incidence of repeat offenders.

120 § 53.1-181. Establishment of program.

121 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 ~~these 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; 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, *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 this article, that provides probation and related services pursuant to the requirements of this article, 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.~~ *composed of 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 deputy appointed by the governing body; a judge of the general district court; a circuit court judge; a juvenile and domestic relations district court judge; a chief magistrate; one chief of police or the sheriff in a jurisdiction not served by a police department to represent law enforcement; an attorney for the Commonwealth; a public defender, or an attorney who is experienced in the defense of criminal matters; a sheriff or the regional jail administrator responsible for jails serving those jurisdictions involved in the *local pretrial services and community-based corrections probation* program; a local educator; and a community services board administrator.

§ 53.1-184. Withdrawal from program.

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

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

On behalf of the counties, cities, or combinations thereof which they represent, the community

183 criminal justice boards shall have the responsibility to:

184 1. ~~Provide for the purchase, Advise on the development and operation of community local pretrial~~
185 ~~services and community-based probation programs; and services pursuant to § 19.2-152.2 and~~
186 ~~§ 53.1-182.1; and facilities for use by the courts in diverting offenders from local correctional facility~~
187 ~~placements;~~

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

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

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

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

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

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

202 § 53.1-185.1. Eligibility to participate.

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

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

213 § 53.1-185.2. Funding; failure to comply; prohibited use of funds.

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

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

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

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

227 E. Any supervision or intervention fees collected by local programs established under this article
228 shall be retained by the locality serving as fiscal agent and shall be utilized *solely* for program
229 expansion and program development, or to supplant local costs of the program operation. Any program
230 collecting such fees shall keep records of the collected fees, report the amounts to the locality serving as
231 fiscal agent and make all records available to the community criminal justice board. Such fees shall be
232 in addition to ~~those any other imposed pursuant to § 53.1-150 on a defendant or offender as a condition~~
233 *of a deferred proceeding, conviction or sentencing by a court as required by general law.*

234 § 53.1-185.3. City or county to act as administrator and fiscal agent.

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

242 The participating city or county acting as administrator and fiscal agent pursuant to this section may
243 be reimbursed for the actual costs associated with the implementation of the ~~community corrections~~
244 *local community-based probation* program, including fiscal administration, accounting, payroll services,

245 financial reporting, and auditing. Any costs must be approved by the community criminal justice board
246 and reimbursed from those funds received for the operation of the community corrections program, and
247 may not exceed one percent of those funds received in any single fiscal year.
248 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
249 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
250 **is \$0 in FY 2010.**