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SENATE BILL NO. 642

Offered January 18, 2002

A BILL to amend and reenact §§ 19.2-303.2, 19.2-303.3, 53.1-180, 53.1-181 and 53.1-185.2 of the Code of Virginia, relating to discharge and dismissal; community corrections programs.

Patron—Watkins

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-303.2, 19.2-303.3, 53.1-180, 53.1-181 and 53.1-185.2 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-303.2. Persons charged with first offense may be placed on probation.

Whenever any person who has not previously been convicted of any felony or a Class 1 misdemeanor pleads guilty to or enters a plea of not guilty to any crime against property constituting a misdemeanor, under Articles 5, 6, 7 and 8 of Chapter 5 (§ 18.2-119 et seq.) of Title 18.2, 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 prior to sentencing, subject to terms and conditions set by the court, which may include restitution for losses caused, payment of court costs and court-appointed attorney's fees, and placement in a community-based corrections program; set by the court. 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 purpose of applying this section in subsequent proceedings. This section shall not apply when there is a statute governing deferral and dismissal of a specific offense.

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

A. Any defendant who is (i) convicted on or after July 1, 1995, of a misdemeanor or a felony that is not a felony act of violence as defined in § 19.2-297.1, and for which the court imposes a sentence of twelve months or less, or has his misdemeanor proceeding deferred under § 19.2-303.2, (ii) no younger than eighteen years of age or is considered an adult at the time of conviction or placement on probation; and (iii) who meets other eligibility criteria pursuant to this section and § 53.1-180 may be sentenced to or placed in as a condition of probation, a local community-based probation program established pursuant to § 53.1-181 by the local governing bodies within that judicial district or circuit.

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

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

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

61 § 53.1-180. Purpose.

62 It is the purpose of this article to enable any city, county or combination thereof to develop, establish
63 and maintain local community-based probation programs to provide the judicial system with (i)
64 sentencing alternatives for certain misdemeanants or persons convicted of felonies which are not felony
65 acts of violence, as defined in § 19.2-297.1 and sentenced pursuant to § 19.2-303.3 and (ii) *alternatives*
66 *for certain defendants referred pursuant to § 19.2-303.3; for whom the court imposes a sentence of*
67 *twelve months or less and who may require less than institutional custody.*

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

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

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

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

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

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

80 § 53.1-181. Establishment of program.

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

90 § 53.1-185.2. Funding; failure to comply; prohibited use of funds.

91 A. Counties and cities shall be required to establish a local community-based probation program
92 under this article only to the extent funded by the Commonwealth through the general appropriation act.

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

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

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

104 E. Any supervision or intervention fees collected by local programs established under this article
105 shall be retained by the locality serving as fiscal agent and shall be utilized solely for program
106 expansion and program development, or to supplant local costs of the program operation. Any program
107 collecting such fees shall keep records of the collected fees, report the amounts to the locality serving as
108 fiscal agent and make all records available to the community criminal justice board. Such fees shall be
109 in addition to any other imposed on a defendant or offender as a condition of a deferred proceeding,
110 conviction or sentencing by a court as required by general law.