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## SENATE BILL NO. 642

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

Senate Amendments in [ ] — February 4, 2002

(Patron Prior to Substitute—Senator Watkins)

*A BILL to amend and reenact §§ 9.1-173, 9.1-174, 9.1-182, 19.2-303.2 and 19.2-303.3 of the Code of Virginia, relating to discharge and dismissal; community-based probation programs.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 9.1-173, 9.1-174, 9.1-182, 19.2-303.2 and 19.2-303.3 of the Code of Virginia are amended and reenacted as follows:**

§ 9.1-173. Community-based probation programs; purpose.

It is the purpose of this article to enable any city, county or combination thereof to develop, establish and maintain local community-based ~~corrections~~ probation programs to provide the judicial system with (i) sentencing alternatives for certain misdemeanants or persons convicted of ~~nonviolent~~ felonies *that are not acts of violence*, as defined in § ~~19.2-316.1~~ 19.2-297.1 and sentenced pursuant to § 19.2-303.3, for whom the court may impose a jail sentence and who may require less than institutional custody and (ii) *alternatives for defendants who have misdemeanor proceedings deferred under § 19.2-303.2 and who are referred pursuant to § 19.2-303.3.*

The article shall be interpreted and construed so as to:

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

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

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

4. 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. Provide appropriate post-sentencing alternatives in localities for certain offenders with the goal of reducing the incidence of repeat offenders.

§ 9.1-174. Establishment of community-based probation programs.

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 defendants and offenders who, pursuant to § 19.2-303.3, are ~~convicted, sentenced and placed on probation~~ services through a court and who are considered suitable candidates for *such 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.

§ 9.1-182. Funding; failure to comply; prohibited use of funds.

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

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

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

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

E. Any supervision or intervention fees collected by local programs established under this article shall be retained by the locality serving as fiscal agent and shall be utilized solely for program 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 any other imposed on a defendant or offender as a condition of a deferred proceeding,

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60 conviction or sentencing by a court as required by general law.

61 § 19.2-303.2. Persons charged with first offense may be placed on probation.

62 Whenever any person who has not previously been convicted of any felony *or a Class 1*  
63 *misdemeanor* pleads guilty to or enters a plea of not guilty to ~~any crime against property constituting a~~  
64 ~~misdemeanor, under Articles 5, 6, 7 and 8 of Chapter 5 (§ 18.2-119 et seq.) of Title 18.2, the court,~~  
65 upon such plea if the facts found by the court would justify a finding of guilt, without entering a  
66 judgment of guilt and with the consent of the accused *and the attorney for the Commonwealth if*  
67 *participating*, may defer further proceedings and place him on probation *prior to sentencing*, subject to  
68 terms and conditions *set by the court*, which may include restitution for losses caused, *payment of court*  
69 *costs and court-appointed attorney's fees, and placement in a community-based corrections program; set*  
70 ~~by the court~~. Upon violation of a term or condition, the court may enter an adjudication of guilt and  
71 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge  
72 the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be  
73 without adjudication of guilt and is a conviction only for the purpose of applying this section in  
74 subsequent proceedings. *This section shall not apply to proceedings pursuant to [ § 18.2-251*  
75 *§ 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, subsection A of*  
76 *§ 46.2-341.24 ] or when there is a statute governing deferral and dismissal of a specific offense.*

77 § 19.2-303.3. Sentence to local community-based probation program; eligibility for participation;  
78 evaluation; deferred sentencing; withdrawal or removal from program; payment for costs.

79 A. Any defendant who is (i) convicted ~~on or after July 1, 1995,~~ of a misdemeanor or a felony that is  
80 not a felony act of violence as defined in § 19.2-297.1, and for which the court imposes a sentence of  
81 twelve months or less, *or has his misdemeanor proceeding deferred under § 19.2-303.2,* (ii) no younger  
82 than eighteen years of age or is considered an adult at the time of conviction *or placement on*  
83 *probation;* and (iii) who meets other eligibility criteria pursuant to this section and § ~~53.1-180~~ 9.1-173  
84 may be sentenced to *or placed in as a condition of probation,* a local community-based probation  
85 program established pursuant to § ~~53.1-181~~ 9.1-174 by the local governing bodies within that judicial  
86 district or circuit.

87 B. Prior to or at the time of sentencing, the court may order the defendant placed in a local  
88 community-based probation program pursuant to § ~~53.1-181~~ 9.1-174 upon a determination by the court  
89 that the defendant may benefit from the program and is capable of returning to society as a productive  
90 citizen with a reasonable amount of supervision and intervention including programs and services set  
91 forth in § ~~53.1-182.1~~ 9.1-176. All or part of any sentence imposed that has been suspended, shall be  
92 conditioned upon the defendant's successful completion of any program established pursuant to §  
93 ~~53.1-181~~ 9.1-174. The court may impose terms and conditions of supervision as it deems appropriate,  
94 including that the defendant abide by any additional requirements of supervision imposed or established  
95 by the program during the period of probation supervision.

96 C. Any officer of a local probation program established or operated pursuant to the Comprehensive  
97 Community Corrections Act for Local-Responsible Offenders (§ ~~53.1-180~~ 9.1-173 et seq.) may seek a  
98 warrant or capias from any judicial officer for the arrest of any person on probation and under its  
99 supervision for removal from the program for (i) intractable behavior; (ii) refusal to comply with the  
100 terms and conditions imposed by the court; (iii) refusal to comply with the requirements of local  
101 probation supervision established by the program; or (iv) the commission of a new offense while on  
102 local probation and under program supervision. Upon arrest, the defendant shall be brought before the  
103 court for a hearing. Upon finding that the defendant exhibited intractable behavior as defined herein, or  
104 refused to comply with terms and conditions imposed, the court may revoke all or part of the suspended  
105 sentence and supervision, and commit the defendant to serve whatever sentence was originally imposed  
106 or impose such other terms and conditions of supervision as it deems appropriate. "Intractable behavior"  
107 is that behavior which, in the determination of the court, indicates a defendant's unwillingness or  
108 inability to conform his behavior to that which is necessary for successful completion of the program or  
109 that the defendant's behavior is so disruptive as to threaten the successful completion of the program by  
110 other participants.

111 D. The court may order a defendant ~~sentenced pursuant to this section to pay an amount to defray~~  
112 ~~the cost of the services received in accordance with subsection D of § 53.1-185.2~~ 9.1-182.