

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 883

An Act to amend and reenact §§ 9.1-174 and 19.2-303.3 of the Code of Virginia, relating to court requirements for the sentencing, placement, and removal of offenders on local community-based probation.

[H 1526]

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

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

§ 9.1-174. Establishment of program.

To facilitate local involvement and flexibility in responding to the problem of crime in their communities and to permit locally designed *probation* programs ~~which that~~ will fit its needs, any city, county or combination thereof may, and any city, county or combination thereof ~~which that~~ 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~~ (i) offenders who, ~~are convicted and sentenced pursuant to § 19.2-303.3, are convicted, sentenced and placed on probation services through a court~~ and who are considered suitable candidates for programs ~~which that~~ require less than incarceration in a local correctional facility and (ii) ~~defendants who are provided a deferred proceeding and placed on probation~~. Such programs and services may be provided by qualified public agencies or ~~by qualified~~ private agencies pursuant to appropriate contracts.

§ 19.2-303.3. Sentence to local community-based probation agency; services agency; requirements for participation; sentencing; and removal from probation; payment of costs.

A. Any ~~defendant~~ offender 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 total sentence of ~~twelve~~ 12 months or less, and (ii) no younger than ~~eighteen~~ 18 years of age or is considered an adult at the time of conviction; and (iii) ~~who meets other eligibility criteria pursuant to this section and § 9.1-173~~ may be sentenced to a local community-based probation ~~program~~ services agency established pursuant to § 9.1-174 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~~ offender placed in a local community-based probation program pursuant to § 9.1-174 upon a determination by the court that the ~~defendant~~ offender 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 § 9.1-176. All or part of any sentence imposed that has been suspended, shall be conditioned upon the ~~defendant's~~ offender's successful completion of any program established pursuant to § 9.1-174.

The court may impose terms and conditions of supervision as it deems appropriate, including that the ~~defendant~~ offender abide by any additional requirements of supervision imposed or established by the program during the period of probation supervision.

C. Any sworn officer of a local probation ~~program~~ agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 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~~ agency; or (iv) the commission of a new offense while on local probation and under ~~program~~ agency supervision. Upon arrest, the ~~defendant~~ offender shall be brought ~~before the court~~ for a hearing. ~~Upon~~ before the court of appropriate jurisdiction. After finding that the ~~defendant~~ offender (a) exhibited intractable behavior as defined ~~herein, herein; or~~ (b) refused to comply with terms and conditions imposed by the court; (c) ~~refused to comply with the requirements of local probation supervision established by the agency; or~~ (d) committed a new offense while on local probation and under agency supervision, the court may revoke all or part of the suspended sentence and supervision, and commit the ~~defendant~~ offender to serve whatever sentence was originally imposed or impose such other terms and conditions of supervision as it deems appropriate or, in a case where the proceeding has been deferred, enter an adjudication of guilt and proceed as otherwise provided by law.

"Intractable behavior" is that behavior ~~which that~~, in the determination of the court, indicates a ~~defendant's~~ an offender's unwillingness or inability to conform his behavior to that which is necessary for successful completion of the ~~program~~ probation or that the ~~defendant's~~ offender's behavior is so disruptive as to threaten the successful completion of the program by other participants.

D. ~~The court may order a defendant~~ An offender sentenced to or provided a deferred proceeding and placed on probation pursuant to this section may be required to pay an amount to ~~defray the cost of the~~

towards the costs of his supervision and services received in accordance with subsection D of § 9.1-182.