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HOUSE BILL NO. 1526

Offered January 20, 2006

A BILL 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.

Patron—Moran

Referred to Committee for Courts of Justice

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 pursuant to § 19.2-303.2.~~ 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 placed in a local community-based probation program pursuant to ~~§ 9.1-174~~ 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 ~~§ 9.1-176.~~ 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 ~~§ 9.1-174.~~ The court may upon determination that the offender is capable of returning to society as a productive citizen who may benefit from supervision and intervention, including programs and services set forth in § 9.1-176, suspend the sentence imposed in whole or in part and order the offender placed on local community-based probation, conditioned upon the defendant's successful completion of such probation.

The court may, in accordance with general law, also defer further proceedings and place on local community-based probation, subject to terms and conditions, any person who is:

1. Charged with any Class 1 or 2 misdemeanor offense for which such a proceeding is authorized by statute or

2. Charged with first offense possession of a controlled substance or first offense possession of marijuana for which the court could have imposed a sentence to jail pursuant to § 18.2-251 and who:

a. Has not previously been convicted of any such offense and

b. Has not previously had a proceeding against him for violation of such an offense dismissed, and

3. Pleads guilty to or enters a plea of not guilty, when, upon such plea, 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.

Notwithstanding any other provision of law, placement on probation pursuant to subsection H of § 18.2-258.1 does not provide for a deferred proceeding.

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

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59 probation supervision.

60 C. Any *sworn* officer of a local probation ~~program~~ *agency* established or operated pursuant to the
61 Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) may
62 seek a ~~warrant or~~ *capias* from any judicial officer for the arrest of any person on probation and under its
63 supervision ~~for removal from the program~~ for (i) intractable behavior; (ii) refusal to comply with the
64 terms and conditions imposed by the court; (iii) refusal to comply with the requirements of local
65 probation supervision established by the ~~program~~ *agency*; or (iv) the commission of a new offense while
66 on local probation and under ~~program~~ *agency* supervision. Upon arrest, the ~~defendant~~ *offender* shall be
67 brought ~~before the court~~ for a hearing. ~~Upon~~ *before the court of appropriate jurisdiction*. After finding
68 that the ~~defendant~~ *offender* (a) exhibited intractable behavior as defined ~~herein~~ *herein*; ~~or~~ (b) refused to
69 comply with terms and conditions imposed *by the court*; (c) *refused to comply with the requirements of*
70 *local probation supervision established by the agency; or (d) committed a new offense while on local*
71 *probation and under agency supervision*, the court may revoke all or part of the suspended sentence and
72 supervision, and commit the ~~defendant~~ *offender* to serve whatever sentence was originally imposed or
73 impose such other terms and conditions of supervision as it deems appropriate *or, in a case where the*
74 *proceeding has been deferred, enter an adjudication of guilt and proceed as otherwise provided by law.*

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

79 D. ~~The court may order a defendant~~ *An offender sentenced to or provided a deferred proceeding and*
80 *placed on probation pursuant to this section may be required to pay an amount to defray the cost of the*
81 *towards the costs of his supervision and services received in accordance with subsection D of § 9.1-182.*