

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

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 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.

ENROLLED

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