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HOUSE BILL NO. 2858

Offered January 10, 2007

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A *BILL to amend and reenact §§ 2.2-3706, 2.2-3711, 4.1-305, 9.1-173 through 9.1-183, 9.1-185.4, 9.1-186.4, 16.1-305, 18.2-55, 18.2-57.3, 18.2-64.2, 18.2-67.4, 18.2-251, 18.2-251.01, 18.2-252, 18.2-254, 18.2-254.1, 19.2-80.2, 19.2-152.2 through 19.2-152.7, 19.2-299.2, 19.2-303.3, 19.2-389.1, 19.2-390.01, and 30-19.1:4 of the Code of Virginia, relating to local community-based probation services.*

Patron—Moran

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3706, 2.2-3711, 4.1-305, 9.1-173 through 9.1-183, 9.1-185.4, 9.1-186.4, 16.1-305, 18.2-55, 18.2-57.3, 18.2-64.2, 18.2-67.4, 18.2-251, 18.2-251.01, 18.2-252, 18.2-254, 18.2-254.1, 19.2-80.2, 19.2-152.2 through 19.2-152.7, 19.2-299.2, 19.2-303.3, 19.2-389.1, 19.2-390.01, and 30-19.1:4 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3706. Disclosure of criminal records; limitations.

A. As used in this section:

"Criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.

B. Law-enforcement agencies shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

C. Information in the custody of law-enforcement agencies relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be released.

D. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.

E. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

F. The following records are excluded from the provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

1. Complaints, memoranda, correspondence, case files or reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;

2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;

5. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;

6. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;

7. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;

8. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation,

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59 probation supervision or monitoring by a local community-based probation ~~program~~ *services agency* in
60 accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or
61 supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of
62 Chapter 4 of Title 53.1; and

63 9. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for
64 cellular telephones, pagers, or comparable portable communication devices provided to its personnel for
65 use in the performance of their official duties.

66 G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the
67 provisions of this chapter except:

68 1. Those portions of noncriminal incident or other investigative reports or materials containing
69 identifying information of a personal, medical or financial nature provided to a law-enforcement agency
70 where the release of such information would jeopardize the safety or privacy of any person;

71 2. Those portions of any records containing information related to plans for or resources dedicated to
72 undercover operations; or

73 3. Records of background investigations of applicants for law-enforcement agency employment or
74 other confidential administrative investigations conducted pursuant to law.

75 H. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department
76 of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 are excluded from the provisions of
77 this chapter, including information obtained from state, local and regional officials, except to the extent
78 that information is required to be posted on the Internet pursuant to § 9.1-913.

79 I. In the event of conflict between this section as it relates to requests made under this section and
80 other provisions of law, this section shall control.

81 § 2.2-3711. Closed meetings authorized for certain limited purposes.

82 A. Public bodies may hold closed meetings only for the following purposes:

83 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
84 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
85 officers, appointees, or employees of any public body; and evaluation of performance of departments or
86 schools of public institutions of higher education where such evaluation will necessarily involve
87 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
88 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
89 involves the teacher and some student and the student involved in the matter is present, provided the
90 teacher makes a written request to be present to the presiding officer of the appropriate board.

91 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
92 involve the disclosure of information contained in a scholastic record concerning any student of any
93 Virginia public institution of higher education or any state school system. However, any such student,
94 legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to
95 be present during the taking of testimony or presentation of evidence at a closed meeting, if such
96 student, parents, or guardians so request in writing and such request is submitted to the presiding officer
97 of the appropriate board.

98 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
99 disposition of publicly held real property, where discussion in an open meeting would adversely affect
100 the bargaining position or negotiating strategy of the public body.

101 4. The protection of the privacy of individuals in personal matters not related to public business.

102 5. Discussion concerning a prospective business or industry or the expansion of an existing business
103 or industry where no previous announcement has been made of the business' or industry's interest in
104 locating or expanding its facilities in the community.

105 6. Discussion or consideration of the investment of public funds where competition or bargaining is
106 involved, where, if made public initially, the financial interest of the governmental unit would be
107 adversely affected.

108 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
109 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
110 negotiating or litigating posture of the public body; and consultation with legal counsel employed or
111 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
112 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
113 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
114 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
115 permit the closure of a meeting merely because an attorney representing the public body is in attendance
116 or is consulted on a matter.

117 8. In the case of boards of visitors of public institutions of higher education, discussion or
118 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
119 for services or work to be performed by such institution. However, the terms and conditions of any such
120 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign

person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Discussion, consideration, review, and deliberations by local community corrections resources boards regarding the placement in community diversion programs of individuals previously sentenced to state correctional facilities.

19. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

20. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety.

21. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

22. Those portions of meetings in which individual child death cases are discussed by the State Child

182 Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which
183 individual child death cases are discussed by a regional or local child fatality review team established
184 pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed
185 by family violence fatality review teams established pursuant to § 32.1-283.3.

186 23. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
187 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
188 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
189 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
190 proprietary, business-related information pertaining to the operations of the University of Virginia
191 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
192 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
193 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
194 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
195 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
196 Medical School, as the case may be.

197 24. In the case of the Virginia Commonwealth University Health System Authority, discussion or
198 consideration of any of the following: the acquisition or disposition of real or personal property where
199 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
200 operational plans that could affect the value of such property, real or personal, owned or desirable for
201 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
202 contracts for services or work to be performed by the Authority; marketing or operational strategies
203 where disclosure of such strategies would adversely affect the competitive position of the Authority;
204 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications
205 or evaluations of other employees.

206 25. Those portions of the meetings of the Intervention Program Committee within the Department of
207 Health Professions to the extent such discussions identify any practitioner who may be, or who actually
208 is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

209 26. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
210 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
211 by or on behalf of individuals who have requested information about, applied for, or entered into
212 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.)
213 of Title 23 is discussed.

214 27. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created
215 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
216 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless
217 E-911 service.

218 28. Those portions of disciplinary proceedings by any regulatory board within the Department of
219 Professional and Occupational Regulation, Department of Health Professions, or the Board of
220 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
221 a decision or meetings of health regulatory boards or conference committees of such boards to consider
222 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
223 requested by either of the parties.

224 29. Discussion or consideration by a responsible public entity or an affected local jurisdiction, as
225 those terms are defined in § 56-557, of confidential proprietary records excluded from this chapter
226 pursuant to subdivision 11 of § 2.2-3705.6.

227 30. Discussion of the award of a public contract involving the expenditure of public funds, including
228 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
229 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
230 the public body.

231 31. Discussion or consideration by the Commonwealth Health Research Board of grant application
232 records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6.

233 32. Discussion or consideration by the Commitment Review Committee of records excluded from
234 this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as
235 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

236 33. [Expired.]

237 34. Discussion or consideration of confidential proprietary records and trade secrets excluded from
238 this chapter pursuant to subdivision 18 of § 2.2-3705.6.

239 35. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
240 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets
241 excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

242 36. Discussion or consideration by the State Board of Elections or local electoral boards of voting
243 security matters made confidential pursuant to § 24.2-625.1.

37. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 1 of § 2.2-3706.

38. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

39. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Intervention Program Committee within the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs and services.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall consume, purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to consume, purchase or attempt to consume or purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a mandatory minimum fine of \$500 or ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision and (ii) the license to operate a motor vehicle in the Commonwealth of any such person age 18 or older shall be suspended for a period of not less than six months and not more than one year. The court, in its discretion and upon a demonstration of hardship, may authorize any person convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or subsection E of § 18.2-271.1 or when referred to a local community-based probation ~~program~~ *services agency* established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require a person issued a restricted permit under the provisions of this subsection to be (i) monitored by an alcohol safety action program, or (ii) supervised by a local community-based probation ~~program~~ *services agency* established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. The alcohol safety action program or local community-based probation ~~program~~ *services agency* shall report to the court any violation of the terms of the restricted permit, the required alcohol safety action program monitoring or ~~the~~ local community-based probation *services* and any condition related

thereto or any failure to remain alcohol-free during the suspension period.

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any person who has not previously been convicted of underaged consumption, purchase or possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused. If the accused is placed on local community-based probation, the program *or services* shall be located in any of the judicial districts served by the *local* community-based probation ~~program~~ *services agency* or in any judicial district ordered by the court when the placement is with an alcohol safety action program. The services shall be provided by (i) a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, (ii) certified by the Commission on VASAP, or (iii) by a program *or services* made available through a community-based probation ~~program~~ *services agency* established pursuant to ~~§ 9.1-174~~ *Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1*, if one has been established for the locality. When an offender is ordered to enter a local community-based probation ~~program~~ *services* rather than the alcohol safety action program, the local community-based probation ~~program~~ *services agency* shall be responsible for providing for services or referring the offender to education or treatment services as a condition of probation.

Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be treated as a conviction for the purpose of applying this section in any subsequent proceedings.

§ 9.1-173. Purpose.

It is the purpose of this article to enable any city, county or combination thereof to develop, establish, and maintain a local community-based probation ~~programs~~ *services agency* to provide the judicial system with sentencing alternatives for certain misdemeanants or persons convicted of felonies that are not felony acts of violence, as defined in § 19.2-297.1 and sentenced pursuant to § 19.2-303.3, for whom the court imposes a sentence of ~~twelve~~ 12 months or less and who may require less than institutional custody.

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 a community-based probation services agency.

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

§ 9.1-175. Board to prescribe standards; biennial plan.

The Board shall approve standards as prescribed by the Department for the development, implementation, operation and evaluation of local community-based probation ~~programs~~, services and

facilities authorized by this article. Any city, county or combination thereof which establishes ~~programs~~ and provides *local community-based probation* services pursuant to this article shall submit a biennial criminal justice plan to the Department for review and approval.

§ 9.1-176. Mandated services; optional services and facilities.

Any city, county or combination thereof that elects or is required to establish a local community-based probation ~~program~~ *services agency* pursuant to this article shall provide to the judicial system the following ~~programs~~ and services as components of local *community-based* probation supervision: community service; home incarceration with or without electronic monitoring; electronic monitoring; and substance abuse screening, assessment, testing and treatment. Additional ~~programs~~ and services *and facilities*, including, but not limited to, local day reporting ~~center programs~~ *centers* and services, local halfway house ~~programs~~ *facilities* and services for the temporary care of adults placed on *community-based* probation, and law-enforcement diversion into detoxification center programs, as defined in § 9.1-163, may be established by the city, county or combination thereof.

§ 9.1-176.1. Duties and responsibilities of local community-based probation officers.

A. Each local *community-based* probation officer, for the localities served, shall:

1. Supervise and assist all local-responsible adult offenders, residing within the localities served and placed on local *community-based* probation by any judge of any court within the localities served;

2. Ensure offender compliance with all orders of the court, including the requirement to perform community service;

3. Conduct, when ordered by a court, substance abuse screenings, or conduct or facilitate the preparation of assessments pursuant to state approved protocols;

4. Conduct, at his discretion, random drug and alcohol tests on any offender whom the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the abuse of alcohol or prescribed medication;

5. Facilitate placement of offenders in substance abuse education or treatment programs *and services* or other education or treatment programs *and services* based on the needs of the offender;

6. Seek a *caapias* from any judicial officer in the event of failure to comply with conditions of *local community-based* probation or supervision on the part of any offender provided that noncompliance resulting from intractable behavior presents a risk of flight, or a risk to public safety or to the offender;

7. Seek a motion to show cause for offenders requiring a subsequent hearing before the court;

8. Provide information to assist any law-enforcement officer with the return to custody of defendants placed on supervision for which a *caapias* has been sought; and

9. Keep such records and make such reports as required by the Department of Criminal Justice Services.

B. Each local probation officer may provide the following optional services, as appropriate and when available resources permit:

1. Supervise local-responsible adult offenders placed on home incarceration with or without home electronic monitoring as a condition of *local community-based* probation;

2. Investigate and report on any local-responsible adult offender and prepare or facilitate the preparation of any other screening, assessment, evaluation, testing or treatment required as a condition of probation;

3. Monitor placements of local-responsible adults who are required to perform court-ordered community service at approved work sites;

4. Assist the courts, when requested, by monitoring the collection of court costs, fines and restitution to the victims of crime for offenders placed on local probation; and

5. Collect supervision and intervention fees pursuant to § 9.1-182 subject to local approval and the approval of the Department of Criminal Justice Services.

§ 9.1-177. Form of oath of office for local community-based probation officers.

Every local *community-based* probation officer who is an employee of a local community-based probation agency, established by any city, county or combination thereof, or operated pursuant to this article, that provides probation and related services pursuant to the requirements of this article, shall take an oath of office as prescribed in § 49-1 before entering the duties of his office. The oath of office shall be taken before any general district or circuit court judge in any city or county that has established services for the judicial system pursuant to this article.

§ 9.1-177.1. Confidentiality of records of and reports on adult persons under investigation by or placed on probation supervision with a local community-based probation services agency.

A. Any investigation report, including a presentencing investigation report, prepared by a local *community-based* probation officer is confidential and is exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such reports shall be filed as a part of the case record. Such reports shall be made available only by court order and shall be sealed upon final order by the court; except that such reports shall be available upon request to (i) any criminal justice agency, as defined in

§ 9.1-101, of this or any other state or of the United States; (ii) any agency where the accused is referred for assessment or treatment; or (iii) counsel for the person who is the subject of the report.

B. Any report on the progress of an offender under the supervision or of a local community-based probation agency and any information relative to the identity of or inferring personal characteristics of an accused, including demographic information, diagnostic summaries, records of office visits, medical, substance abuse, psychiatric or psychological records or information, substance abuse screening, assessment and testing information, and other sensitive information not explicitly classified as criminal history record information, is exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, such information may be disseminated to criminal justice agencies as defined in § 9.1-101 in the discretion of the custodian of these records.

§ 9.1-178. Community criminal justice boards.

A. Each county or city or combination thereof developing and establishing a local pretrial services or a community-based probation ~~program~~ *services agency* pursuant to this article shall establish a community criminal justice board. Each county and city participating in a local pretrial services or a *local* community-based probation ~~program~~ *services* shall be represented on the community criminal justice board. In the event that one county or city appropriates funds to ~~the program~~ *these services* as part of a multijurisdictional effort, any other participating county or city shall be considered to be participating in a ~~program~~ if such locality appropriates funds to ~~the program~~ *these services*. Appointments to the board shall be made by each local governing body. In cases of multijurisdictional participation, unless otherwise agreed upon, each participating city or county shall have an equal number of appointments. Boards shall be composed of the number of members established by a resolution or ordinance of each participating jurisdiction.

B. Each board shall include, at a minimum, the following members: a person appointed by each governing body to represent the governing body; a judge of the general district court; a circuit court judge; a juvenile and domestic relations district court judge; a chief magistrate; one chief of police or the sheriff in a jurisdiction not served by a police department to represent law enforcement; an attorney for the Commonwealth; a public defender or an attorney who is experienced in the defense of criminal matters; a sheriff or the regional jail administrator responsible for jails serving those jurisdictions involved in ~~the~~ local pretrial services and community-based probation ~~program~~ *services*; a local educator; and a community services board administrator. Any officer of the court appointed to a community criminal justice board pursuant to this subsection may designate a member of his staff approved by the governing body to represent him at meetings of the board.

§ 9.1-179. Withdrawal from services.

Any participating city or county may, at the beginning of any calendar quarter, by ordinance or resolution of its governing body, notify the Director of the Department and, in the case of multijurisdictional ~~programs~~ *services*, the other member jurisdictions, of its intention to withdraw from ~~the participation in~~ local community-based probation ~~program~~ *services*. Withdrawal shall be effective as of the last day of the quarter in which the notice is given.

§ 9.1-180. Responsibilities of community criminal justice boards.

On behalf of the counties, cities, or combinations thereof which they represent, the community criminal justice boards shall have the responsibility to:

1. Advise on the development and operation of local pretrial services and community-based probation ~~programs and~~ *services* pursuant to §§ 19.2-152.2 and 9.1-176 for use by the courts in diverting offenders from local correctional facility placements;

2. Assist community agencies and organizations in establishing and modifying programs and services for *defendants and* offenders on the basis of an objective assessment of the community's needs and resources;

3. Evaluate and monitor community programs, *and pretrial and local community-based probation* services and facilities to determine their impact on offenders;

4. Develop and amend the criminal justice plan in accordance with guidelines and standards set forth by the Department and oversee the development and amendment of the community-based corrections plan as required by § 53.1-82.1 for approval by participating local governing bodies;

5. Review the submission of all criminal justice grants regardless of the source of funding;

6. Facilitate local involvement and flexibility in responding to the problem of crime in their communities; and

7. Do all things necessary or convenient to carry out the responsibilities expressly given in this article.

§ 9.1-181. Eligibility to participate.

A. Any city, county, or combination thereof, which elects to, or is required to establish ~~programs~~ *services* shall participate in a local community-based probation ~~program~~ *services agency* by ordinance or resolution of its governing authority. In cases of multijurisdictional participation, each ordinance or resolution shall identify the chosen administrator and fiscal agent as set forth in § 9.1-183. Such

ordinances or resolutions shall be provided to the Director of the Department, regardless of funding source for the established programs.

B. Any local community-based probation ~~program~~ *services agency* established pursuant to this article shall be available as a sentencing alternative for persons sentenced to incarceration in a local correctional facility or who otherwise would be sentenced to incarceration and who would have served their sentence in a local or regional correctional facility.

§ 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~~ *services agency* 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 *local community-based probation* 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 participating in ~~programs~~ *local community-based probation services* established under this article for reimbursement towards the costs of their supervision.

E. Any supervision or intervention fees collected by local ~~programs~~ *community-based probation services agencies* 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 of *services*, or to supplant local costs of the ~~program~~ operation. Any ~~program~~ *local community-based probation services agency* 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, conviction or sentencing by a court as required by general law.

§ 9.1-183. City or county to act as administrator and fiscal agent.

Any single participating city or county shall act as the administrator and fiscal agent for the funds awarded for purposes of implementing a local pretrial services or community-based probation ~~program~~ *services agency*. In cases of multijurisdictional participation, the governing authorities of the participating localities shall select one of the participating cities or counties, with its consent, to act as administrator and fiscal agent for the funds awarded for purposes of implementing the local pretrial services or community-based probation ~~program~~ *services agency* on behalf of the participating jurisdictions.

The participating city or county acting as administrator and fiscal agent pursuant to this section may be reimbursed for the actual costs associated with the implementation of the local pretrial services or community-based probation ~~program~~ *services agency*, including fiscal administration, accounting, payroll services, financial reporting, and auditing. Any costs must be approved by the community criminal justice board and reimbursed from those funds received for the operation of the local *pretrial or* community-based probation ~~program~~ *services agency*, and may not exceed one percent of those funds received in any single fiscal year.

§ 9.1-185.4. Limitations on licensure.

A. In order to be licensed as a bail bondsman a person shall (i) be 18 years of age or older, (ii) have received a high school diploma or GED, and (iii) have successfully completed the bail bondsman exam required by the Board or successfully completed prior to July 1, 2005, a surety bail bondsman exam required by the State Corporation Commission under former § 38.2-1865.7.

B. The following persons are not eligible for licensure as bail bondsmen and may not be employed nor serve as the agent of a bail bondsman:

1. Persons who have been convicted of a felony within the Commonwealth, any other state, or the United States, who have not been pardoned, or whose civil rights have not been restored;

2. Employees of a local or regional jail;

3. Employees of a sheriff's office;

4. Employees of a state or local police department;

5. Persons appointed as conservators of the peace pursuant to Article 4.1 (§ 9.1-150.1 et seq.) of this chapter;

6. Employees of an office of an attorney for the Commonwealth;

7. Employees of the Department of Corrections, Department of Criminal Justice Services, or a local *pretrial or community* ~~corrections~~ *community-based probation services agency*; and

8. Spouses of or any persons residing in the same household as persons referred to in subdivisions 2 through 7 of this section.

C. The exclusions in subsection B shall not be construed to limit the ability of a licensed bail bondsman to employ or contract with a licensed bail enforcement agent authorized to do business in the Commonwealth.

§ 9.1-186.4. Limitations on licensure.

A. In order to be licensed as a bail enforcement agent a person shall (i) be 21 years of age or older, (ii) have received a high school diploma or GED, and (iii) have satisfactorily completed a basic certification course in training for bail enforcement agents offered by the Department. Partial exemptions to the training requirements may be approved by the Department if the individual has received prior training.

B. The following persons are not eligible for licensure as a bail enforcement agent and may not be employed nor serve as agents for a bail enforcement agent:

1. Persons who have been convicted of a felony within the Commonwealth, any other state, or the United States, who have not been pardoned, or whose civil rights have not been restored.

2. Persons who have been convicted of any misdemeanor within the Commonwealth, any other state, or the United States within the preceding five years. This prohibition may be waived by the Department, for good cause shown, so long as the conviction was not for one of the following or a substantially similar misdemeanor: carrying a concealed weapon, assault and battery, sexual battery, a drug offense, driving under the influence, discharging a firearm, a sex offense, or larceny.

3. Persons who have been convicted of any misdemeanor within the Commonwealth, any other state, or the United States, that is substantially similar to the following: brandishing a firearm or stalking. The Department may not waive the prohibitions under this subdivision 3.

4. Persons currently the subject of a protective order within the Commonwealth or another state.

5. Employees of a local or regional jail.

6. Employees of a sheriff's office, or a state or local police department.

7. Commonwealth's Attorneys, and any employees of their offices.

8. Employees of the Department of Corrections, Department of Criminal Justice Services, or a local community corrections pretrial or community-based probation services agency.

C. The exclusions in subsection B shall not be construed to prohibit law enforcement from accompanying a bail enforcement agent when he engages in bail recovery.

§ 16.1-305. Confidentiality of court records.

A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services, children in need of supervision and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

3. The attorney for any party, including the attorney for the Commonwealth;

4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court. However, for the purposes of an investigation conducted by a local community-based probation services agency, preparation of a pretrial investigation report, or of a presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based probation program services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;

5. Any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

A copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein as provided in §§ 19.2-298.01 and 19.2-299.

B. All or any part of the records enumerated in subsection A, or information secured from such records, which is presented to the judge in court or otherwise in a proceeding under this law shall also be made available to the parties to the proceedings and their attorneys.

B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that certain records or portions thereof remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

C. All other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B of this section. However, a licensed bail bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any other portion of his principal's juvenile court records.

D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding and that such papers will be only used for such evidentiary purpose.

D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act that would be a felony if committed by an adult, which show the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for the Commonwealth upon his certification that such papers are needed as evidence in a pending criminal prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary purpose.

E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the disposition in a case involving a juvenile who is committed to state care after being adjudicated for a criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a written request, the Department of Juvenile Justice shall provide advance notice of such juvenile offender's anticipated date of release from commitment.

G. Any record in a juvenile case file which is open for inspection by the professional staff of the Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted shall be subject to the provisions of § 16.1-300.

§ 18.2-55. Bodily injuries caused by prisoners, state juvenile probationers and state and local adult probationers or adult parolees.

A. It shall be unlawful for a person confined in a state, local or regional correctional facility as defined in § 53.1-1; in a secure facility or detention home as defined in § 16.1-228 or in any facility designed for the secure detention of juveniles; or while in the custody of an employee thereof to knowingly and willfully inflict bodily injury on:

1. An employee thereof, or
2. Any other person lawfully admitted to such facility, except another prisoner or person held in legal custody, or

3. Any person who is supervising or working with prisoners or persons held in legal custody, or

4. Any such employee or other person while such prisoner or person held in legal custody is committing any act in violation of § 53.1-203.

B. It shall be unlawful for an accused, probationer or parolee under the supervision of, or being investigated by, (i) a probation or parole officer whose powers and duties are defined in § 16.1-237 or § 53.1-145, (ii) a local pretrial services officer associated with a ~~program~~ *an agency* established pursuant to Article 5 (§ 19.2-152.2) of Chapter 9 of Title 19.2, or (iii) a local *community-based* probation officer

674 associated with a ~~program~~ *an agency* established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1
675 of Title 9.1, to knowingly and willfully inflict bodily injury on such officer while he is in the
676 performance of his duty, knowing or having reason to know that the officer is engaged in the
677 performance of his duty.

678 Any person violating any provision of this section is guilty of a Class 5 felony.

679 § 18.2-57.3. Persons charged with first offense of assault and battery against a family or household
680 member may be placed on local community-based probation; conditions; education and treatment
681 programs; costs and fees; violations; discharge.

682 When a person who is no younger than 18 years of age or who is considered an adult at the time of
683 the proceeding and who has not previously been convicted of any offense under this article or under any
684 statute of the United States or of any state or any ordinance of any local government relating to assault
685 and battery against a family or household member or has not previously had a proceeding against him
686 for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of
687 not guilty to a violation of § 18.2-57.2, the court, upon such plea if the facts found by the court would
688 justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may
689 defer further proceedings and place him on *local community-based* probation upon terms and conditions.

690 As a term or condition, the court may, where assessment or evaluation services are available, require
691 the accused to be assessed or evaluated and, based on the results of the assessment or evaluation, require
692 the accused to enter an education or treatment program *or services* indicated by the assessment or
693 evaluation, if available. The court, when assessment or evaluation services are not available, may require
694 education or treatment services such as, in the opinion of the court, may be best suited to the needs of
695 the accused.

696 The court shall require the person entering such education or treatment program *or services* under the
697 provisions of this section to pay all or part of the costs of the program *or services*, including the costs
698 of any assessment, evaluation, testing, education and treatment, based upon the accused's ability to pay
699 unless the person is determined by the court to be indigent.

700 Following the finding of facts that would justify a finding of guilt, the court may order the defendant
701 be placed ~~in~~ *with* a local community-based probation ~~program~~ *services agency* established pursuant to
702 Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if such ~~program~~ *a services agency* is available. As
703 a condition of local community-based probation, if available, the court shall require the accused to
704 successfully complete all treatment and/or education programs *or services* required by the assessment or
705 evaluation and to be of good behavior during the period of supervised probation and for a period of not
706 less than two years following the completion of probation. The court shall order the defendant to be of
707 good behavior for a period of not less than two years following the finding of facts that would justify a
708 finding of guilt when no supervised probation is ordered.

709 The court shall, unless done at arrest, order the accused to report to the original arresting
710 law-enforcement agency to submit to fingerprinting.

711 Upon violation of a term or condition of supervised probation or of the period of good behavior, the
712 court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the
713 terms and conditions, the court shall discharge the person and dismiss the proceedings against him.
714 Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only
715 for the purposes of applying this section in subsequent proceedings. As such, no charges dismissed
716 pursuant to this section shall be eligible for expungement under § 19.2-392.2.

717 Notwithstanding any other provision of this section, whenever a court places an individual on
718 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
719 for purposes of § 18.2-308.

720 § 18.2-64.2. Carnal knowledge of an inmate, parolee, probationer, detainee or pretrial or posttrial
721 offender; penalty.

722 An accused shall be guilty of carnal knowledge of an inmate, parolee, probationer, detainee, or
723 pretrial *defendant* or posttrial offender if he or she is an employee or contractual employee of, or a
724 volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the
725 Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or
726 local court services unit, as defined in § 16.1-235, a local community-based probation ~~program~~ *services*
727 *agency* or a pretrial services ~~program~~ *agency*; is in a position of authority over the inmate, probationer,
728 parolee, detainee, or a pretrial *defendant* or posttrial offender; knows that the inmate, probationer,
729 parolee, detainee, or pretrial *defendant* or posttrial offender is under the jurisdiction of the state or local
730 correctional facility, a regional jail, the Department of Corrections, the Department of Juvenile Justice, a
731 secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as
732 defined in § 16.1-235, a local community-based probation ~~program~~ *services agency*, or a pretrial services
733 ~~program~~ *agency*; and carnally knows, without the use of force, threat or intimidation (i) an inmate who
734 has been committed to jail or convicted and sentenced to confinement in a state or local correctional
735 facility or regional jail or (ii) a probationer, parolee, detainee, or a pretrial *defendant* or posttrial

offender under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation ~~program~~ *services agency*, a pretrial services ~~program~~ *agency*, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program *or agency*. Such offense is a Class 6 felony.

For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anallungus, anal intercourse and animate or inanimate object sexual penetration.

§ 18.2-67.4. Sexual battery.

A. An accused is guilty of sexual battery if he sexually abuses, as defined in § 18.2-67.10, (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation, or ruse, (ii) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, or (iii) a probationer, parolee, or a pretrial *defendant* or posttrial offender under the jurisdiction of the Department of Corrections, a local community-based probation ~~program~~ *services agency*, a pretrial services ~~program~~ *agency*, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services ~~program~~ *or agency* and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation ~~program~~ *services agency*, a pretrial services ~~program~~ *agency* or a local or regional jail; is in a position of authority over an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation ~~program~~ *services agency*, a pretrial services ~~program~~ *agency* or a local or regional jail.

B. Sexual battery is a Class 1 misdemeanor.

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, 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 upon terms and conditions.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or § 19.2-299.2, as appropriate, and enter a treatment and/or education program *or services*, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. ~~This~~ *The program or services* may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, by a similar program which is made available through the Department of Corrections, (ii) a *local* community-based ~~corrections program~~ *probation services agency* established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (i) to successfully complete the treatment or education program *or services*, (ii) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (iii) to make reasonable efforts to secure and maintain employment, and (iv) to comply with a plan of at least 100 hours of community service for a felony and up to ~~twenty-four~~ 24 hours of community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

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

797 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without
798 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent
799 proceedings.

800 Notwithstanding any other provision of this section, whenever a court places an individual on
801 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
802 for purposes of §§ 18.2-259.1, 22.1-315 and 46.2-390.1, and the driver's license forfeiture provisions of
803 those sections shall be imposed. The provisions of this paragraph shall not be applicable to any offense
804 for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same
805 offense.

806 § 18.2-251.01. Substance abuse screening and assessment for felony convictions.

807 A. When a person is convicted of a felony, not a capital offense, committed on or after January 1,
808 2000, he shall be required to undergo a substance abuse screening and, if the screening indicates a
809 substance abuse or dependence problem, an assessment by a certified substance abuse counselor as
810 defined in § 54.1-3500 employed by the Department of Corrections or by an agency employee under the
811 supervision of such counselor. If the person is determined to have a substance abuse problem, the court
812 shall require him to enter a treatment and/or education program *or services*, if available, which, in the
813 opinion of the court, is best suited to the needs of the person. ~~This~~ The program *or services* may be
814 located in the judicial district in which the conviction was had or in any other judicial district as the
815 court may provide. The treatment and/or education program *or services* shall be licensed by the
816 Department of Mental Health, Mental Retardation and Substance Abuse Services or shall be a similar
817 program *or services* which ~~is~~ *are* made available through the Department of Corrections if the court
818 imposes a sentence of one year or more or, if the court imposes a sentence of ~~twelve~~ 12 months or less,
819 by a similar program *or services* available through a local or regional jail, a *local* community-based
820 ~~corrections program~~ *probation services agency* established pursuant to § 9.1-174, or an ASAP program
821 certified by the Commission on VASAP. The *services agency* or program may require the person
822 entering such program *or services* under the provisions of this section to pay a fee for the education and
823 treatment component, or both, based upon the defendant's ability to pay.

824 B. As a condition of any suspended sentence and probation, the court shall order the person to
825 undergo periodic testing and treatment for substance abuse, if available, as the court deems appropriate
826 based upon consideration of the substance abuse assessment.

827 § 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing, and
828 treatment or education.

829 The trial judge or court trying the case of any person found guilty of violating any law concerning
830 the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical
831 substances and like substances, shall condition any suspended sentence by first requiring such person to
832 agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic
833 substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be
834 conducted by the supervising probation agency or by personnel of any program or agency approved by
835 the supervising probation agency. The cost of such testing ordered by the court shall be paid by the
836 Commonwealth and taxed as a part of the costs of such criminal proceedings. The judge or court shall
837 order the person, as a condition of any suspended sentence, to undergo such treatment or education for
838 substance abuse, if available, as the judge or court deems appropriate based upon consideration of the
839 substance abuse assessment. The treatment or education shall be provided by a program *or agency*
840 licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, by a
841 similar program *or services* available through the Department of Corrections if the court imposes a
842 sentence of one year or more or, if the court imposes a sentence of ~~twelve~~ 12 months or less, by a
843 similar program *or services* available through a local or regional jail, a *local* community-based
844 ~~corrections program~~ *probation services agency* established pursuant to § 9.1-174, or an ASAP program
845 certified by the Commission on VASAP.

846 § 18.2-254. Commitment of convicted person for treatment for substance abuse.

847 A. Whenever any person who has not previously been convicted of any offense under this article or
848 under any statute of the United States or of any state relating to narcotic drugs, marijuana, stimulant,
849 depressant, or hallucinogenic drugs or has not previously had a proceeding against him for violation of
850 such an offense dismissed as provided in § 18.2-251 is found guilty of violating any law concerning the
851 use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances,
852 and like substances, the judge or court shall require such person to undergo a substance abuse screening
853 pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol
854 testing, as may be directed by the court. The cost of such testing ordered by the court shall be paid by
855 the Commonwealth and taxed as a part of the costs of the criminal proceedings. The judge or court shall
856 also order the person to undergo such treatment or education for substance abuse, if available, as the
857 judge or court deems appropriate based upon consideration of the substance abuse assessment. The
858 treatment or education shall be provided by a program *or agency* licensed by the Department of Mental

Health, Mental Retardation and Substance Abuse Services or by a similar program *or services* available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program *or services* available through a local or regional jail, a *local* community-based ~~corrections program~~ *probation services agency* established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

B. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by or closely related to the use of drugs and determined by the court, pursuant to a substance abuse screening and assessment, to be in need of treatment for the use of drugs may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse, licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. A charge of escape may be prosecuted in either the jurisdiction where the treatment facility is located or the jurisdiction where the person was sentenced to commitment. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

C. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines, pursuant to a substance abuse screening and assessment, that such defendant is in need of treatment, may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

§ 18.2-254.1. Drug Treatment Court Act.

A. This section shall be known and may be cited as the "Drug Treatment Court Act."

B. The General Assembly recognizes that there is a critical need in the Commonwealth for effective treatment programs that reduce the incidence of drug use, drug addiction, family separation due to parental substance abuse, and drug-related crimes. It is the intent of the General Assembly by this section to enhance public safety by facilitating the creation of drug treatment courts as means by which to accomplish this purpose.

C. The goals of drug treatment courts include: (i) reducing drug addiction and drug dependency among offenders; (ii) reducing recidivism; (iii) reducing drug-related court workloads; (iv) increasing personal, familial and societal accountability among offenders; and, (v) promoting effective planning and use of resources among the criminal justice system and community agencies.

D. Drug treatment courts are specialized court dockets within the existing structure of Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases. Local officials must complete a recognized planning process before establishing a drug treatment court program.

E. Administrative oversight for implementation of the Drug Treatment Court Act shall be conducted by the Supreme Court of Virginia. The Supreme Court of Virginia shall be responsible for (i) providing oversight for the distribution of funds for drug treatment courts; (ii) providing technical assistance to drug treatment courts; (iii) providing training for judges who preside over drug treatment courts; (iv) providing training to the providers of administrative, case management, and treatment services to drug treatment courts; and (v) monitoring the completion of evaluations of the effectiveness and efficiency of drug treatment courts in the Commonwealth.

F. A state drug treatment court advisory committee shall be established to (i) evaluate and

920 recommend standards for the planning and implementation of drug treatment courts; (ii) assist in the
921 evaluation of their effectiveness and efficiency; and (iii) encourage and enhance cooperation among
922 agencies that participate in their planning and implementation. The committee shall be chaired by the
923 Chief Justice of the Supreme Court of Virginia or his designee and shall include a member of the
924 Judicial Conference of Virginia who presides over a drug treatment court; a district court judge; the
925 Executive Secretary or his designee; the directors of the following executive branch agencies:
926 Department of Corrections, Department of Criminal Justice Services, Department of Juvenile Justice,
927 Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Social
928 Services; a representative of the following entities: ~~community corrections/pretrial services programs~~ a
929 *local community-based probation and pretrial services agency*, the Commonwealth's Attorney's
930 Association, the Public Defender Commission, the Circuit Court Clerk's Association, the Virginia
931 Sheriff's Association, the Virginia Association of Chiefs of Police, the Commission on VASAP, and two
932 representatives designated by the Virginia Drug Court Association.

933 G. Each jurisdiction or combination of jurisdictions that intend to establish a drug treatment court or
934 continue the operation of an existing one shall establish a local drug treatment court advisory committee.
935 Jurisdictions that establish separate adult and juvenile drug treatment courts may establish an advisory
936 committee for each such court. Each advisory committee shall ensure quality, efficiency, and fairness in
937 the planning, implementation, and operation of the drug treatment court or courts that serve the
938 jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not
939 be limited to the following people or their designees: (i) the drug treatment court judge; (ii) the attorney
940 for the Commonwealth, or, where applicable, the city or county attorney who has responsibility for the
941 prosecution of misdemeanor offenses; (iii) the public defender or a member of the local criminal defense
942 bar in jurisdictions in which there is no public defender; (iv) the clerk of the court in which the drug
943 treatment court is located; (v) a representative of the Virginia Department of Corrections, or the
944 Department of Juvenile Justice, or both, from the local office which serves the jurisdiction or
945 combination of jurisdictions; (vi) a representative of ~~community corrections/pretrial services~~ a *local*
946 *community-based probation and pretrial services agency*; (vii) a local law-enforcement officer; (viii) a
947 representative of the Department of Mental Health, Mental Retardation, and Substance Abuse Services or
948 a representative of local drug treatment providers; (ix) the drug court administrator; (x) a representative
949 of the Department of Social Services; (xi) county administrator or city manager; and (xii) any other
950 people selected by the drug treatment court advisory committee.

951 H. Each local drug treatment court advisory committee shall establish criteria for the eligibility and
952 participation of offenders who have been determined to be addicted to or dependent upon drugs. Subject
953 to the provisions of this section, neither the establishment of a drug treatment court nor anything herein
954 shall be construed as limiting the discretion of the attorney for the Commonwealth to prosecute any
955 criminal case arising therein which he deems advisable to prosecute, except to the extent the
956 participating attorney for the Commonwealth agrees to do so. As defined in § 17.1-805 or 19.2-297.1,
957 adult offenders who have been convicted of a violent criminal offense within the preceding 10 years, or
958 juvenile offenders who previously have been adjudicated not innocent of any such offense within the
959 preceding 10 years, shall not be eligible for participation in any drug treatment court established or
960 continued in operation pursuant to this section.

961 I. Each drug treatment court advisory committee shall establish policies and procedures for the
962 operation of the court to attain the following goals: (i) effective integration of drug and alcohol
963 treatment services with criminal justice system case processing; (ii) enhanced public safety through
964 intensive offender supervision and drug treatment; (iii) prompt identification and placement of eligible
965 participants; (iv) efficient access to a continuum of alcohol, drug, and related treatment and rehabilitation
966 services; (v) verified participant abstinence through frequent alcohol and other drug testing; (vi) prompt
967 response to participants' noncompliance with program requirements through a coordinated strategy; (vii)
968 ongoing judicial interaction with each drug court participant; (viii) ongoing monitoring and evaluation of
969 program effectiveness and efficiency; (ix) ongoing interdisciplinary education and training in support of
970 program effectiveness and efficiency; and (x) ongoing collaboration among drug treatment courts, public
971 agencies, and community-based organizations to enhance program effectiveness and efficiency.

972 J. Participation by an offender in a drug treatment court shall be voluntary and made pursuant only
973 to a written agreement entered into by and between the offender and the Commonwealth with the
974 concurrence of the court.

975 K. Nothing in this section shall preclude the establishment of substance abuse treatment programs
976 *and services* pursuant to the deferred judgment provisions of § 18.2-251.

977 L. Each offender shall contribute to the cost of the substance abuse treatment he receives while
978 participating in a drug treatment court pursuant to guidelines developed by the drug treatment court
979 advisory committee.

980 M. Nothing contained in this section shall confer a right or an expectation of a right to treatment for
981 an offender or be construed as requiring a local drug treatment court advisory committee to accept for

participation every offender.

N. The Office of the Executive Secretary shall, with the assistance of the state drug treatment court advisory committee, develop a statewide evaluation model and conduct ongoing evaluations of the effectiveness and efficiency of all local drug treatment courts. A report of these evaluations shall be submitted to the General Assembly by December 1 of each year. Each local drug treatment court advisory committee shall submit evaluative reports to the Office of the Executive Secretary as requested.

O. Notwithstanding any other provision of this section, no drug treatment court shall be established subsequent to March 1, 2004, unless the jurisdiction or jurisdictions intending or proposing to establish such court have been specifically granted permission under the Code of Virginia to establish such court. The provisions of this subsection shall not apply to any drug treatment court established on or before March 1, 2004, and operational as of July 1, 2004.

P. Subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee, there shall be established a drug treatment court in the following jurisdictions: the City of Chesapeake and the City of Newport News.

§ 19.2-80.2. Duty of arresting officer; providing magistrate or court with criminal history information.

In any case in which an officer proceeds under §§ 19.2-76, 19.2-80 and 19.2-82, such officer shall, to the extent possible, obtain and provide the magistrate or court with the arrested person's criminal history information prior to any proceeding under Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title. A pretrial services ~~program~~ *agency* established pursuant to ~~§ 19.2-152.4~~ § 19.2-152.2 may, in lieu of the arresting officer, provide the criminal history to the magistrate or court.

§ 19.2-152.2. Purpose; establishment of pretrial services and services agencies.

It is the purpose of this article to provide more effective protection of society by establishing ~~programs~~ *pretrial services agencies* that will assist judicial officers in discharging their duties pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title. Such ~~programs~~ *agencies* are intended to provide better information and services for use by judicial officers in determining the risk to public safety and the assurance of appearance of persons age 18 or over or persons under the age of 18 who have been transferred for trial as adults held in custody and charged with an offense, other than an offense punishable by death, who are pending trial or hearing. Any city, county or combination thereof may establish a pretrial services ~~program~~ *agency* and any city, county or combination thereof required to submit a community-based corrections plan pursuant to § 53.1-82.1 shall establish a pretrial services ~~program~~ *agency*.

§ 19.2-152.3. Department of Criminal Justice Services to prescribe standards; biennial plan.

The Department of Criminal Justice Services shall prescribe standards for the development, implementation, operation and evaluation of ~~programs~~ *services* authorized by this article. The Department of Criminal Justice Services shall develop risk assessment and other instruments to be used by pretrial services ~~programs~~ *agencies* in assisting judicial officers in discharging their duties pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title. Any city, county or combination thereof which establishes a pretrial services ~~program~~ pursuant to this article shall submit a biennial plan to the Department of Criminal Justice Services for review and approval.

§ 19.2-152.4. Mandated services.

Any city, county or combination thereof which elects or is required to establish a pretrial services ~~program~~ *agency* shall provide all information and services for use by judicial officers as set forth in Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title.

§ 19.2-152.4:1. Form of oath of office for local pretrial services officer; authorization to seek capias.

Every pretrial services officer who is an employee of a local pretrial services agency established by any city, county or combination thereof or operated pursuant to this article shall take an oath of office as prescribed in § 49-1 and to provide services pursuant to the requirements of this article before entering the duties of his office. The oath of office shall be taken before any general district or circuit court judge in any county or city which has established services for use by judicial officers pursuant to this article.

In addition, any officer of a pretrial services agency established or operated pursuant to this article may seek a ~~warrant~~ or capias from any judicial officer for the arrest of any person under the agency's custody and supervision for failure to comply with any conditions of release imposed by a judicial officer, for failure to comply with the conditions of pretrial supervision as established by a pretrial services agency, or when there is reason to believe that the person will fail to appear, will leave, or has left the jurisdiction to avoid prosecution.

§ 19.2-152.4:2. Confidentiality of records of and reports on adult persons under investigation by or in the custody or supervision of a local pretrial services agency[LR1].

A. Any pretrial investigation report prepared by a local pretrial services officer is confidential and is exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such reports shall be filed as a part of the case record. Such reports shall be sealed upon receipt by the court and made available only

1043 by court order; except that such reports shall be available upon request to (i) any criminal justice
1044 agency, as defined in § 9.1-101, of this or any other state or of the United States; (ii) any agency where
1045 the accused is referred for assessment or treatment; or (iii) counsel for the person who is the subject of
1046 the report.

1047 B. Any report on the progress of an accused under the supervision or custody of a pretrial services
1048 agency and any information relative to the identity of or inferring personal characteristics of an accused,
1049 including demographic information, diagnostic summaries, records of office visits, medical, substance
1050 abuse, psychiatric or psychological records or information, substance abuse screening, assessment and
1051 testing information, and other sensitive information not explicitly classified as criminal history record
1052 information, is exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However,
1053 such information may be disseminated to criminal justice agencies as defined in § 9.1-101 in the
1054 discretion of the custodian of these records.

1055 § 19.2-152.4:3. Duties and responsibilities of local pretrial services officers.

1056 A. Each local pretrial services officer, for the jurisdictions served, shall:

1057 1. Investigate and interview defendants arrested on state and local warrants and who are detained in
1058 jails located in jurisdictions served by the ~~program~~ agency while awaiting a hearing before any court
1059 that is considering or reconsidering bail, at initial appearance, advisement or arraignment, or at other
1060 subsequent hearings;

1061 2. Present a pretrial investigation report with recommendations to assist courts in discharging their
1062 duties related to granting or reconsidering bail;

1063 3. Supervise and assist all defendants residing within the jurisdictions served and placed on pretrial
1064 supervision by any judicial officer within the jurisdictions to ensure compliance with the terms and
1065 conditions of bail;

1066 4. Conduct random drug and alcohol tests on any defendant under supervision for whom a judicial
1067 officer has ordered testing or who has been required to refrain from excessive use of alcohol or use of
1068 any illegal drug or controlled substance or other defendant-specific condition of bail related to alcohol or
1069 substance abuse;

1070 5. Seek a capias from any judicial officer pursuant to § 19.2-152.4:1 for any defendant placed under
1071 supervision or the custody of the agency who fails to comply with the conditions of bail or supervision,
1072 when continued liberty or noncompliance presents a risk of flight, a risk to public safety or risk to the
1073 defendant;

1074 6. Seek an order to show cause why the defendant should not be required to appear before the court
1075 in those cases requiring a subsequent hearing before the court;

1076 7. Provide defendant-based information to assist any law-enforcement officer with the return to
1077 custody of defendants placed on supervision for which a capias has been sought; and

1078 8. Keep such records and make such reports as required by the Commonwealth of Virginia
1079 Department of Criminal Justice Services.

1080 B. Each local pretrial services officer, for the jurisdictions served, may provide the following optional
1081 services, as appropriate and when available resources permit:

1082 1. Conduct, subject to court approval, drug and alcohol screenings, or tests at investigation pursuant
1083 to subsection B of § 19.2-123 or following release to supervision, and conduct or facilitate the
1084 preparation of screenings or assessments or both pursuant to state approved protocols;

1085 2. Facilitate placement of defendants in a substance abuse education or treatment program *or services*
1086 or other education or treatment service when ordered as a condition of bail;

1087 3. Sign for the custody of any defendant investigated by a pretrial services officer, and released by a
1088 court to pretrial supervision as the sole term and condition of bail or when combined with an unsecured
1089 bond;

1090 4. Provide defendant information and investigation services for those who are detained in jails
1091 located in jurisdictions served by the ~~program~~ agency and are awaiting an initial bail hearing before a
1092 local magistrate;

1093 5. Supervise defendants placed by any judicial officer on home electronic monitoring as a condition
1094 of bail and supervision;

1095 6. Prepare, for defendants investigated, the financial statement-eligibility determination form for
1096 indigent defense services; and

1097 7. Subject to approved procedures and if so requested by the court, coordinate for defendants
1098 investigated, services for court-appointed counsel and for interpreters for foreign-language speaking and
1099 hearing-impaired defendants.

1100 § 19.2-152.5. Community criminal justice boards.

1101 Each city, county or combination thereof establishing a pretrial services ~~program~~ agency shall also
1102 establish a community criminal justice board pursuant to § 9.1-178.

1103 § 19.2-152.6. Withdrawal from pretrial services.

1104 Any participating city or county may, at the beginning of any calendar quarter, by ordinance or

resolution of its governing authority, notify the Department of Criminal Justice Services of its intention to withdraw from ~~the participation in~~ pretrial services ~~program~~. Such withdrawal shall be effective as of the last day of the quarter in which such notice is given.

§ 19.2-152.7. Funding; failure to comply.

Counties and cities shall be required to establish a pretrial services ~~program~~ *agency* only to the extent funded by the Commonwealth through the general appropriation act. The Department of Criminal Justice Services shall periodically review each ~~program~~ *agency* established under this article to determine compliance with the submitted plan and operating standards. If the Department determines that a ~~program~~ *any agency* 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.

§ 19.2-299.2. Alcohol and substance abuse screening and assessment for designated Class 1 misdemeanor convictions.

A. When a person is convicted of any offense committed on or after January 1, 2000, under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2, and such offense is punishable as a Class 1 misdemeanor, the court shall order the person to undergo a substance abuse screening as part of the sentence if the defendant's sentence includes probation supervision by a local community-based probation ~~program~~ *services agency* established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 or participation in a local alcohol safety action program. Whenever a court requires a person to enter into and successfully complete an alcohol safety action program pursuant to § 18.2-271.1 for a second offense of the type described therein, or orders an evaluation of a person to be conducted by an alcohol safety action program pursuant to any provision of § 46.2-391, the alcohol safety action program shall assess such person's degree of alcohol abuse before determining the appropriate level of treatment to be provided or to be recommended for such person being evaluated pursuant to § 46.2-391.

The court may order such screening upon conviction as part of the sentence of any other Class 1 misdemeanor if the defendant's sentence includes probation supervision by a local community-based probation ~~program~~ *services agency* established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, participation in a local alcohol safety action program or any other sanction and the court has reason to believe the defendant has a substance abuse or dependence problem.

B. A substance abuse screening ordered pursuant to this section shall be conducted by the local alcohol safety action program. When an offender is ordered to enter ~~programming under the~~ local community-based probation ~~program~~ *services* established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, rather than the local alcohol safety action program, the local community-based probation ~~program~~ *services agency* shall be responsible for the screening. However, if a local community-based probation ~~program~~ *services agency* has not been established for the locality, the local alcohol safety action program shall conduct the screening as part of the sentence.

C. If the screening indicates that the person has a substance abuse or dependence problem, an assessment shall be completed and if the assessment confirms that the person has a substance abuse or dependence problem, as a condition of a suspended sentence and probation, the court shall order the person to complete the substance abuse education and intervention component, or both as appropriate, of the local alcohol safety action program or such other *agency providing treatment programs or services*, if available, such as in the opinion of the court would be best suited to the needs of the person. If the referral is to the local alcohol safety action program, the program may charge a fee for the education and intervention component, or both, not to exceed \$300, based upon the defendant's ability to pay.

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

A. Any 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 12 months or less, and (ii) no younger than 18 years of age or is considered an adult at the time of conviction may be sentenced to a local community-based probation 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 offender placed ~~in a~~ *under* local community-based probation ~~program~~ *services* pursuant to § 9.1-174 upon a determination by the court that the offender may benefit from ~~the program~~ *these services* 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 offender's successful completion of ~~any program~~ *local community-based probation services* established pursuant to § 9.1-174.

The court may impose terms and conditions of supervision as it deems appropriate, including that the

1166 offender abide by any additional requirements of supervision imposed or established by the ~~program~~
1167 *local community-based probation services agency* during the period of probation supervision.

1168 C. Any sworn officer of a *local community-based probation services agency* established or operated
1169 pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173
1170 et seq.) may seek a *capias* from any judicial officer for the arrest of any person on *local*
1171 *community-based* probation and under its supervision for (i) intractable behavior; (ii) refusal to comply
1172 with the terms and conditions imposed by the court; (iii) refusal to comply with the requirements of
1173 *local community-based* probation supervision established by the agency; or (iv) the commission of a new
1174 offense while on *local community-based* probation and under agency supervision. Upon arrest, the
1175 offender shall be brought for a hearing before the court of appropriate jurisdiction. After finding that the
1176 offender (a) exhibited intractable behavior as defined herein; (b) refused to comply with terms and
1177 conditions imposed by the court; (c) refused to comply with the requirements of *local community-based*
1178 probation supervision established by the agency; or (d) committed a new offense while on *local*
1179 *community-based* probation and under agency supervision, the court may revoke all or part of the
1180 suspended sentence and supervision, and commit the offender to serve whatever sentence was originally
1181 imposed or impose such other terms and conditions of ~~supervision~~ *probation* as it deems appropriate or,
1182 in a case where the proceeding has been deferred, enter an adjudication of guilt and proceed as
1183 otherwise provided by law.

1184 "Intractable behavior" is that behavior that, in the determination of the court, indicates an offender's
1185 unwillingness or inability to conform his behavior to that which is necessary for successful completion
1186 of *local community-based* probation or that the offender's behavior is so disruptive as to threaten the
1187 successful completion of the program by other participants.

1188 D. An offender sentenced to or provided a deferred proceeding and placed on *community-based*
1189 probation pursuant to this section may be required to pay an amount towards the costs of his supervision
1190 and services received in accordance with subsection D of § 9.1-182.

1191 § 19.2-389.1. Dissemination of juvenile record information.

1192 Record information maintained in the Central Criminal Records Exchange pursuant to the provisions
1193 of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and
1194 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial
1195 investigation report prepared by a local pretrial services agency established pursuant to Article 5
1196 (§ 19.2-152.2 et seq.) of Chapter 9 of this title, a presentence or post-sentence investigation report
1197 pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines
1198 worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation
1199 ~~programs~~ *services agencies* established pursuant to the Comprehensive Community Corrections Act for
1200 Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible
1201 offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint
1202 comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System
1203 (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing
1204 and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing
1205 guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time
1206 employee of the State Police, a police department or sheriff's office that is a part of or administered by
1207 the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and
1208 detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, for
1209 purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Department of
1210 Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant
1211 to § 16.1-299.1; (viii) to the Office of the Attorney General, for all criminal justice activities otherwise
1212 permitted and for purposes of performing duties required by the Civil Commitment of Sexually Violent
1213 Predators Act (§ 37.2-900 et seq.); and (ix) to the Virginia Criminal Sentencing Commission for research
1214 purposes.

1215 § 19.2-390.01. Use of Virginia crime code references required.

1216 If any criminal warrant, indictment, information, presentment, petition, summons, charging document
1217 issued by a magistrate, or dispositional document from a criminal trial, involves a jailable offense, it
1218 shall include the Virginia crime code references for the particular offense or offenses covered. When
1219 Virginia crime codes are provided on charging and dispositional documents, the Virginia crime codes
1220 shall be recorded and stored for adult offenders in: criminal history computer systems maintained by the
1221 State Police; court case management computer systems maintained by the Supreme Court of Virginia;
1222 probation and parole case management computer systems maintained by the Department of Corrections
1223 and the Virginia Parole Board; pretrial and ~~community corrections~~ *community-based probation* case
1224 management computer systems maintained by the Department of Criminal Justice Services; and jail
1225 management computer systems maintained by the State Compensation Board. The Department of
1226 Juvenile Justice shall record and store Virginia crime codes for particular offenses related to juveniles in
1227 case management computer systems.

Virginia crime codes shall only be used to facilitate administration and research, and shall not have any legal standing as they relate to a particular offense or offenses.

§ 30-19.1:4. Increase in terms of imprisonment or commitment; fiscal impact statements; appropriations for operating costs.

A. The Virginia Criminal Sentencing Commission shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill which would result in a net increase in periods of imprisonment in state adult correctional facilities. The Department of Planning and Budget shall annually provide the Virginia Criminal Sentencing Commission with the operating cost per inmate.

B. The Department of Planning and Budget, in conjunction with the Department of Juvenile Justice, shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill that would result in a net increase in periods of commitment to the custody of the Department of Juvenile Justice.

C. The requirement for a fiscal impact statement includes, but is not limited to, those bills which add new crimes for which imprisonment or commitment is authorized, increase the periods of imprisonment or commitment authorized for existing crimes, impose minimum or mandatory minimum terms of imprisonment or commitment, or modify the law governing release of prisoners or juveniles in such a way that the time served in prison, or the time committed to the custody of the Department of Juvenile Justice, will increase.

D. The fiscal impact statement of any bill introduced on or after July 1, 2002, that would result in a net increase in periods of imprisonment in state correctional facilities or periods of commitment to the custody of the Department of Juvenile Justice, shall include an analysis of the fiscal impact on local and regional jails, state and local ~~community corrections programs~~ *pretrial and community-based probation services agencies* and juvenile detention facilities.

E. The amount of the estimated appropriation reflected in the fiscal impact statement shall be printed on the face of each such bill, but shall not be codified. If the agency responsible for preparing the fiscal impact statement does not have sufficient information to project the impact, the fiscal impact statement shall state this, and the words "Cannot be determined" shall be printed on the face of each such bill.

F. The fiscal impact statement shall include, but not be limited to, details as to any increase or decrease in the offender population. Statements prepared by the Virginia Criminal Sentencing Commission shall detail any necessary adjustments in guideline midpoints for the crime or crimes affected by the bill as well as adjustments in guideline midpoints for other crimes affected by the implementation of the bill that, in the opinion of the Commission, are necessary and appropriate.

G. The agency preparing the fiscal impact statement shall forward copies of such impact statements to the Clerk of the House of Delegates and the Clerk of the Senate for transmittal to each patron of the legislation and to the chairman of each committee of the General Assembly to consider the legislation.

H. For each law enacted which results in a net increase in periods of imprisonment in state correctional facilities or a net increase in periods of commitment or the time committed to the custody of the Department of Juvenile Justice, a one-year appropriation shall be made from the general fund equal to the estimated increase in operating costs of such law, in current dollars, of the highest of the next six fiscal years following the effective date of the law. "Operating costs" means all costs other than capital outlay costs.

I. The Corrections Special Reserve Fund (the Fund) is hereby established as a nonreverting special fund on the books of the Comptroller. The Fund shall consist of all moneys appropriated by the General Assembly under the provisions of this section and all interest thereon. Any moneys deposited in the Fund shall remain in the Fund at the end of the biennium. Moneys in the Fund shall be expended solely for capital expenses, including the cost of planning or preplanning studies that may be required to initiate capital outlay projects.