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HOUSE BILL NO. 1908

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 6, 2009)

(Patron Prior to Substitute—Delegate Armstrong)

A BILL to amend and reenact § 18.2-57.3 of the Code of Virginia, relating to assault and battery against a family or household member; deferred disposition.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-57.3 of the Code of Virginia is amended and reenacted as follows:

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

A. When a person is charged with a violation of § 18.2-57.2, the court may defer the proceedings against such person, without a finding of guilt, and place him on probation under the terms of this section.

When a person who is no younger than 18 years of age or who is considered B. For a person to be eligible for such deferral, the court shall find that (i) the person was an adult at the time of the proceeding and who commission of the offense, (ii) the person has not previously been convicted of any offense under this article or under any statute of the United States or of any state or any ordinance of any local government relating to assault and battery against a family or household member or, (iii) the person has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, (iv) the person pleads guilty to, or enters a plea of not guilty to enters a plea of not guilty or nolo contendere and the court finds the evidence is sufficient to find the person guilty of, a violation of § 18.2-57.2; 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 local community-based probation upon terms and conditions, and (v) the person consents to such deferral.

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

C. The court may (i) where a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 is available, order that the eligible person be placed with such agency and require, as a condition of local community-based probation, the person to successfully complete all treatment, education programs or services, or any combination thereof indicated by an assessment or evaluation obtained by the local community-based probation services agency if such assessment, treatment or education services are available; or (ii) require successful completion of treatment, education programs or services, or any combination thereof, such as, in the opinion of the court, may be best suited to the needs of the person.

D. The court shall require the person entering such education or treatment program or services under the provisions of this section to pay all or part of the costs of the program or services, including the costs of any assessment, evaluation, testing, education and treatment, based upon the accused's person's ability to pay unless the person is determined by the court to be indigent. Such programs or services shall offer a sliding-scale fee structure or other mechanism to assist participants who are unable to pay the full costs of the required programs or services.

Following the finding of facts that would justify a finding of guilt, the court may order the defendant be placed with a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if such a services agency is available. As a condition of local community-based probation, if available, the The court shall require the accused to successfully complete all treatment and/or education programs or services required by the assessment or evaluation and order the person to be of good behavior during the period of supervised probation and for a period of not less than for a total period of two years following the completion of probation deferral of proceedings, including the period of supervised probation, if available.

The court shall order the defendant to be of good behavior for a period of not less than two years following the finding of facts that would justify a finding of guilt when no supervised probation is ordered.

The court shall, unless done at arrest, order the accused person to report to the original arresting

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60 law-enforcement agency to submit to fingerprinting.

61 ~~Upon violation of a term or condition of supervised probation or of the period of good behavior, the~~
62 ~~court may enter an adjudication of guilt and proceed as otherwise provided.~~ E. Upon fulfillment of the
63 terms and conditions *specified in the court order*, the court shall discharge the person and dismiss the
64 proceedings against him. Discharge and dismissal under this section shall be without adjudication of
65 guilt and is a conviction only for the purposes of applying this section in subsequent proceedings. As
66 ~~such, no~~ No charges dismissed pursuant to this section shall be eligible for expungement under
67 § 19.2-392.2.

68 *F. Upon violation of a term or condition of supervised probation or of the period of good behavior,*
69 *the court may enter an adjudication of guilt and proceed as otherwise provided by law.*

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