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HOUSE BILL NO. 2498

Offered January 15, 2009

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; authority to defer and dismiss.

Patron—Iaquinto

Referred to Committee for Courts of Justice

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.

When a person who is no younger than 18 years of age or who is considered an adult at the time of the proceeding and who 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 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 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. *However, the court shall not exercise the powers granted to it under this section if it found, among the facts that would justify a finding of guilt, that the accused, during the commission of an offense of § 18.2-57.2, knew that a third person, younger than 18 years of age, was physically present.*

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.

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 ability to pay unless the person is determined by the court to be indigent.

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 court shall require the accused to successfully complete all treatment and/or education programs or services required by the assessment or evaluation and to be of good behavior during the period of supervised probation and for a period of not less than two years following the completion of probation. 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 to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition of supervised probation or of the period of good behavior, 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 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings. As such, no charges dismissed pursuant to this section shall be eligible for expungement under § 19.2-392.2.

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

INTRODUCED

HB2498