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HOUSE BILL NO. 878

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact § 19.2-303.3 of the Code of Virginia, relating to local community-based probation services.

Patrons—BaCote, Abbott, Alexander, Herring, McClellan, Tyler and Ward; Senators: Locke and Miller, J.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-303.3 of the Code of Virginia is amended and reenacted as follows:**

§ 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. *A local community-based probation services agency may also supervise adult offenders who are participating in a drug court treatment program.*

B. In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, at the time of sentencing, the clerk of court shall determine by reviewing LIDS, in any case where there is a felony conviction, whether a sample of the offender's blood, saliva, or tissue or an analysis of the sample is stored in the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. If the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the offender appear within 30 days before the sheriff or community-based probation officer and allow the sheriff or community-based probation officer to take the required sample. The order shall also require that, if the offender has not appeared and allowed the sheriff or community-based probation officer to take the required sample by the date stated in the order, then the sheriff or community-based probation officer shall report to the court the offender's failure to appear and provide the required sample. The court may order the offender placed under local community-based probation services pursuant to § 9.1-174 upon a determination by the court that the offender may benefit from these services and is capable of returning to society as a productive citizen with a reasonable amount of supervision and intervention including 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 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 offender abide by any additional requirements of supervision imposed or established by the local community-based probation services agency during the period of probation supervision.

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

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58 provided by law.

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

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