

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 18.2-57.3 of the Code of Virginia, relating to assault and battery against*  
 3 *a family or household member; deferred disposition; waiver of appeal.*

4 [H 1851]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

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

8 **§ 18.2-57.3. Persons charged with first offense of assault and battery against a family or**  
 9 **household member may be placed on local community-based probation; conditions; education and**  
 10 **treatment programs; costs and fees; violations; discharge.**

11 A. When a person is charged with a simple assault in violation of subsection A of § 18.2-57 where  
 12 the victim was a family or household member of the person or a violation of § 18.2-57.2, the court may  
 13 defer the proceedings against such person, without a finding of guilt, and place him on probation under  
 14 the terms of this section.

15 B. For a person to be eligible for such deferral, the court shall find that (i) the person was an adult  
 16 at the time of the commission of the offense, (ii) the person has not previously been convicted of any  
 17 offense under this article or under any statute of the United States or of any state or any ordinance of  
 18 any local government relating to an assault or assault and battery against a family or household member,  
 19 (iii) the person has not previously had a proceeding against him for violation of such an offense  
 20 dismissed as provided in this section, (iv) the person pleads guilty to, or enters a plea of not guilty or  
 21 nolo contendere and the court finds the evidence is sufficient to find the person guilty of, simple assault  
 22 in violation of subsection A of § 18.2-57 where the victim was a family or household member of the  
 23 person or a violation of § 18.2-57.2, and (v) the person consents to such deferral *and to a waiver of his*  
 24 *right to appeal a finding of facts sufficient to justify a finding of guilt under this section entered*  
 25 *pursuant to subsection F for a violation of a term or condition of his probation. A court's order entered*  
 26 *pursuant to subsection A shall be stayed 14 days and shall be placed upon the court's docket for review.*  
 27 *A person may withdraw his consent to the deferral and waiver of his right to appeal by filing written*  
 28 *notice or personally appearing on the date set for review. Upon such withdrawal, the court shall enter a*  
 29 *final order adjudicating guilt and sentence the person accordingly.*

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

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

43 The court shall order the person to be of good behavior for a total period of not less than two years  
 44 following the deferral of proceedings, including the period of supervised probation, if available.

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

47 E. Upon fulfillment of the terms and conditions specified in the court order, the court shall discharge  
 48 the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be  
 49 without adjudication of guilt and is a conviction only for the purposes of applying this section in  
 50 subsequent proceedings. No charges dismissed pursuant to this section shall be eligible for expungement  
 51 under § 19.2-392.2.

52 F. Upon violation of a term or condition of supervised probation or of the period of good behavior,  
 53 the court may enter an adjudication of guilt and proceed as otherwise provided by law. *Any person*  
 54 *placed on probation pursuant to this section who is subsequently adjudicated guilty upon a violation of*  
 55 *a term or condition of his probation shall have no right of appeal on such adjudication.*

56 G. Notwithstanding any other provision of this section, whenever a court places a person on

**57** probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction  
**58** for purposes of Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7.