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HOUSE BILL NO. 2339

Offered January 13, 2017

A BILL to amend and reenact §§ 9.1-176.1, 19.2-303, 19.2-303.3, and 53.1-145 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-303.6, relating to probation violations; intermediate sanctions.

 Patron—Bell, Robert B.

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-176.1, 19.2-303, 19.2-303.3, and 53.1-145 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-303.6 as follows:

§ 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 *capias* 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 *capias* has been sought;

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

10. Determine by reviewing the Local Inmate Data System upon intake and again prior to discharge whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require an offender to submit a sample for DNA analysis.

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.

C. A local community-based probation officer may impose an intermediate sanction pursuant to § 19.2-303.6 on any offender for whom the authority to impose such sanction has been delegated by the court pursuant to § 19.2-303.3.

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such

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conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of a felony, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to 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. In any case in which 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 defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

In any case where a defendant is convicted of an offense committed on or after July 1, 2017, and such defendant is placed on probation, the court may expressly delegate in the sentencing order the authority to impose an intermediate sanction set forth in § 19.2-303.6 to a probation officer.

§ 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. 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 provided by law.

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

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

E. In any case where an offender is convicted of an offense committed on or after July 1, 2017, and such defendant is placed on probation, the court may expressly delegate in the sentencing order the authority to impose an intermediate sanction set forth in § 19.2-303.6 to a community-based probation officer.

§ 19.2-303.6. Probation violation; intermediate sanction.

A. A probation officer may impose an intermediate sanction on any offender under such officer's supervision who has violated any term or condition of the offender's probation for whom the authority to impose such sanction has been delegated by the court and arrest and commit such offender to a local or regional correctional facility for a period of no more than five consecutive days, provided that the following conditions are met:

1. The supervisor of the probation officer has approves the arrest and commitment of the offender;
2. The probation officer issues a noncompliance letter pursuant to § 53.1-149 authorizing the arrest of the offender; and
3. The probation officer notifies the offender of his right to a probation violation hearing under § 19.2-306 and the offender knowingly executes a written waiver of his right to a probation violation hearing and consents to the imposition of the intermediate sanction.

182 *B. The total of all intermediate sanctions that may be imposed pursuant to this section shall not*
183 *exceed 30 total days during the offender's probation period.*

184 *C. If an offender does not consent to the imposition of an intermediate sanction pursuant to this*
185 *section, the probation officer may exercise any other lawful authority he may have with respect to the*
186 *offender.*

187 *D. An offender who has knowingly waived his right to a probation violation hearing and consented*
188 *to the imposition of an intermediate sanction pursuant to this section has no right to appeal the*
189 *imposition of such sanction except on the grounds that the imposition of such sanction would result in*
190 *the confinement of the offender in excess of five consecutive days or 30 days during the offender's*
191 *probation period.*

192 **§ 53.1-145. Powers and duties of probation and parole officers.**

193 In addition to other powers and duties prescribed by this article, each probation and parole officer
194 shall:

195 1. Investigate and report on any case pending in any court or before any judge in his jurisdiction
196 referred to him by the court or judge;

197 2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and
198 when available resources permit, placement of such persons in a substance abuse treatment program
199 which may include utilization of acupuncture and other treatment modalities, and furnish every such
200 person with a written statement of the conditions of his probation and instruct him therein; if any such
201 person has been committed to the Department of Behavioral Health and Developmental Services under
202 the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of probation shall include
203 the requirement that the person comply with all conditions given him by the Department of Behavioral
204 Health and Developmental Services, and that he follow all of the terms of his treatment plan;

205 3. Supervise and assist all persons within his territory released on parole or postrelease supervision,
206 secure, as appropriate and when available resources permit, placement of such persons in a substance
207 abuse treatment program which may include utilization of acupuncture and other treatment modalities,
208 and, in his discretion, assist any person within his territory who has completed his parole, postrelease
209 supervision, or has been mandatorily released from any correctional facility in the Commonwealth and
210 requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to
211 the community;

212 4. Arrest and recommit to the place of confinement from which he was released, or in which he
213 would have been confined but for the suspension of his sentence or of its imposition, for violation of
214 the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer,
215 person subject to post-release supervision or parolee under his supervision, or as directed by the
216 Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

217 5. Keep such records, make such reports, and perform other duties as may be required of him by the
218 Director or by regulations prescribed by the Board of Corrections, and the court or judge by whom he
219 was authorized;

220 6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person
221 subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the
222 officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the
223 abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations
224 governing the officer's exercise of this authority shall be promulgated by the Board;

225 7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the
226 Board and upon the certification of appropriate training and specific authorization by a judge of a circuit
227 court;

228 8. Provide services in accordance with any contract entered into between the Department of
229 Corrections and the Department of Behavioral Health and Developmental Services pursuant to
230 § 37.2-912;

231 9. Pursuant to any contract entered into between the Department of Corrections and the Department
232 of Behavioral Health and Developmental Services, probation and parole officers shall have the power to
233 provide intensive supervision services to persons placed on conditional release, regardless of whether the
234 person has any time remaining to serve on any criminal sentence, pursuant to Chapter 9 (§ 37.2-900 et
235 seq.);

236 10. Determine by reviewing the Local Inmate Data System upon intake and again prior to release
237 whether a blood, saliva, or tissue sample has been taken for DNA analysis for each person placed on
238 probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter
239 18 of Title 19.2 and, if no sample has been taken, require a person placed on probation or parole to
240 submit a sample for DNA analysis; and

241 11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult
242 Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia,
243 would be considered a felony, take a sample or verify that a sample has been taken and accepted into

244 the data bank for DNA analysis in the Commonwealth.

245 Nothing in this article shall require probation and parole officers to investigate or supervise cases
246 before general district or juvenile and domestic relations district courts.

247 *A probation and parole officer may impose an intermediate sanction pursuant to § 19.2-303.6 on any*
248 *offender for whom the authority to impose such sanction has been delegated by the court pursuant to*
249 *§ 19.2-303.*

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