

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 574

An Act to amend and reenact §§ 19.2-295.2, 19.2-303.3, 19.2-316.2, 19.2-316.3, 53.1-67.4, 53.1-145 as it is effective and as it may become effective, §§ 53.1-180, 53.1-181, 53.1-183, 53.1-184, 53.1-185, 53.1-185.2, and 53.1-185.3 of the Code of Virginia, relating to community corrections systems.

[H 2242]

Approved March 24, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-295.2, 19.2-303.3, 19.2-316.2, 19.2-316.3, 53.1-67.4, 53.1-145 as it is effective and as it may become effective, §§ 53.1-180, 53.1-181, 53.1-183, 53.1-184, 53.1-185, 53.1-185.2, and 53.1-185.3 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-295.2. Post-release supervision of felons sentenced for offenses committed on and after January 1, 1995.

A. At the time the court imposes sentence upon a conviction for any felony offense committed on or after January 1, 1995, the court may, in addition to any other punishment imposed if such other punishment includes an active term of incarceration in a state or local correctional facility, impose a term in addition to the active term of not less than six months nor more than three years, as the court may determine. Such additional term shall be suspended and the defendant placed under post-release supervision upon release from the active term of incarceration. The period of supervision shall be established by the court; however, such period shall not be less than six months nor more than three years. Periods of post-release supervision imposed pursuant to this section upon more than one felony conviction may be ordered to run concurrently. Periods of post-release supervision imposed pursuant to this section may be ordered to run concurrently with any period of probation the defendant may also be subject to serve.

B. The period of post-release supervision shall be conducted in the same manner as a like period of supervised probation, including a requirement that the defendant shall abide by such terms and conditions as the court may establish. Failure to successfully abide by such terms and conditions shall be grounds to terminate the period of post-release supervision and recommit the defendant to the *Department of Corrections or to the local* correctional facility from which he was previously released. Procedures for any such termination and recommitment shall be conducted in the same manner as procedures for the revocation of probation and imposition of a suspended sentence.

C. Post-release supervision programs shall be operated through the probation and parole districts established pursuant to § 53.1-141.

D. Nothing in this section shall be construed to prohibit the court from exercising any authority otherwise granted by law.

§ 19.2-303.3. Sentence to community-based corrections program or facility; eligibility for participation; evaluation; sentencing; withdrawal or removal from program; payment for costs.

A. ~~In any case in which the A~~ defendant has been who is (i) convicted on or after July 1, 1995, of a misdemeanor or a nonviolent felony as defined in § 19.2-316.1 for which the court may impose a jail sentence, ~~the court may order the defendant to participate in any or all of the programs provided under Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1 and may sentence the defendant to serve all or part of his sentence at any facility established thereunder~~ (ii) no younger than eighteen years of age or is considered an adult at the time of conviction, and (iii) who meets other eligibility criteria pursuant to this section and § 53.1-180 may be sentenced to a community-based corrections program established pursuant to § 53.1-181 by the local governing bodies within that judicial district or circuit.

B. Prior to or at the time of sentencing, the court may order the defendant placed in the community-based corrections program pursuant to § 53.1-181 upon a determination by the court that the defendant may benefit from the program and is capable of returning to society as a productive citizen with a reasonable amount of supervision and intervention including program components set forth in § 53.1-182.1. All or part of any sentence imposed may be suspended conditioned upon the defendant's completion of any community-based corrections program established pursuant to § 53.1-181. The court may impose such other terms and conditions of supervision as it deems appropriate.

C. Upon the defendant's removal from the program by the Comprehensive Community Corrections Act for Local Responsible Offenders Program for (i) intractable behavior, or (ii) refusal to comply with the terms and conditions imposed by the court, the defendant shall be brought before the court for a hearing. Upon finding that the defendant exhibited intractable behavior as defined herein, or refused to comply with terms and conditions imposed, the court may revoke all or part of the suspended sentence and supervision, and commit the defendant to serve whatever sentence was originally imposed or impose such other terms and conditions of supervision as it deems appropriate. "Intractable behavior" is that

behavior which, in the determination of the court indicates a defendant's unwillingness or inability to conform his behavior to that which is necessary for successful completion of the program or that the defendant's behavior is so disruptive as to threaten the successful completion of the program by other participants.

D. The court may order a defendant sentenced pursuant to this section to pay an amount to defray the cost of the services received.

§ 19.2-316.2. Eligibility for participation; evaluation; sentencing; withdrawal or removal from program.

A defendant who otherwise would have been sentenced to incarceration for a nonviolent felony as defined in § 19.2-316.1 or who has been previously incarcerated for a nonviolent felony as defined in § 19.2-316.1 but otherwise meets the following criteria and (i) who is determined by the court to need more security or supervision than provided by the diversion center incarceration program under § 53.1-67.7, (ii) whose age or physical condition disqualifies him from the Boot Camp Incarceration Program under § 53.1-67.1, and (iii) who can benefit from a regimented environment and structured program, may be considered for commitment to a detention center as established under § 53.1-67.8 as follows:

1. Following conviction and prior to imposition of sentence or following a finding that the defendant's probation should be revoked, upon motion of the defendant, the court may order such defendant committed to the Department of Corrections for a period not to exceed ~~forty-five~~ *sixty* days from the date of commitment for evaluation and diagnosis by the Department to determine suitability for participation in the Detention Center Incarceration Program. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant and may be conducted by the Department at any state or local correctional facility, probation and parole office, or other location deemed appropriate by the Department.

2. Upon determination that (i) such defendant is physically and emotionally suited for the program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for the confinement of the defendant, the Department shall recommend to the court in writing that the defendant be committed to the Detention Center Incarceration Program.

3. Upon receipt of such a recommendation and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program, and if the defendant would otherwise be committed to the Department, the court shall (i) impose sentence, suspend the sentence, and place the defendant on probation or (ii) following a finding that the defendant has violated the terms and conditions of his probation previously ordered, shall place the defendant on probation pursuant to this section. Such probation shall be conditioned upon the defendant's entry into and successful completion of the Detention Center Incarceration Program. The court shall order that, upon successful completion of the program, the defendant shall be released from confinement and be under intensive probation supervision for a period to be specified by the court followed by an additional period of regular probation of not less than one year. The court shall further order that the defendant, following release from confinement, shall (i) make reasonable efforts to secure and maintain employment, (ii) comply with a plan of restitution or community service, (iii) comply with a plan for payment of fines, if any, and costs of court, and (iv) undergo appropriate substance abuse treatment, if necessary. The court may impose such other terms and conditions of probation as it deems appropriate.

4. Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of probation, the court shall cause the defendant to show cause why his probation and suspension of sentence should not be revoked. Upon a finding that the defendant voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of probation, the court may revoke all or part of the probation and suspended sentence and commit the defendant as otherwise provided in this chapter.

§ 19.2-316.3. Eligibility for participation; evaluation; sentencing; withdrawal or removal from program; payment for costs.

A defendant (i) who otherwise would have been sentenced to incarceration for a nonviolent felony as defined in § 19.2-316.1 and who the court determines requires more security or supervision than provided by intensive probation supervision or (ii) whose suspension of sentence would otherwise be revoked after a finding that the defendant has violated the terms and conditions of probation for a nonviolent felony as defined in § 19.2-316.1, may be considered for commitment to a diversion center as established under § 53.1-67.7 as follows:

1. Following conviction and prior to imposition of sentence or following a finding that the defendant's probation should be revoked, upon motion of the defendant, the court may order such defendant committed to the Department of Corrections for a period not to exceed ~~thirty~~ *forty-five* days from the date of commitment for evaluation and diagnosis by the Department to determine suitability for participation in the Diversion Center Incarceration Program. The evaluation and diagnosis may be conducted by the Department at any state or local correctional facility, probation and parole office, or

other location deemed appropriate by the Department.

2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the defendant and (ii) facilities are available for the confinement of the defendant, the Department shall recommend to the court in writing that the defendant be committed to the Diversion Center Incarceration Program.

3. Upon receipt of such a recommendation and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program, and if the defendant would otherwise be committed to the Department, the court (i) shall impose sentence, suspend the sentence, and place the defendant on probation pursuant to this section or (ii) following a finding that the defendant has violated the terms and conditions of his probation previously ordered, shall place the defendant on probation pursuant to this section. Such probation shall be conditioned upon the defendant's entry into and successful completion of the Diversion Center Incarceration Program. The court shall order that, upon successful completion of the program, the defendant shall be released from confinement and be under intensive probation supervision for a period to be specified by the court followed by an additional period of regular probation of not less than one year. The court shall further order that the defendant, prior to release from confinement, shall (i) make reasonable efforts to secure and maintain employment, (ii) comply with a plan of restitution or community service, (iii) comply with a plan for payment of fines, if any, and costs of court, and (iv) undergo substance abuse treatment, if necessary. The court may impose such other terms and conditions of probation as it deems appropriate.

4. Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of probation, the court shall cause the defendant to show cause why his probation and suspension of sentence should not be revoked. Upon a finding that the defendant voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of probation, the court may revoke all or part of the probation and suspended sentence, and commit the defendant as otherwise provided in this chapter.

5. A person sentenced pursuant to this article shall be ordered to pay an amount to be determined by the Board pursuant to regulation to defray the cost of his keep.

§ 53.1-67.4. Authority of Director; purchase of services authorized.

Facilities established under this article may, in the discretion of the Director, be purchased, constructed or leased. The Director is further authorized to employ necessary personnel for these facilities. The Director, pursuant to rules and regulations of the Board, may purchase such services as are deemed necessary in furtherance of this article. Such services may be provided by qualified public agencies or private ~~nonprofit~~ agencies.

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

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

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

2. *Except those persons placed in probation supervision programs established under §§ 53.1-181 and 53.1-182.1*, supervise and assist all persons within his territory placed on probation or post-release supervision pursuant to § 19.2-295.2, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation or post-release supervision and instruct him therein;

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

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

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

6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations

governing the officer's exercise of this authority shall be promulgated by the Board; and

7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Board and upon the certification of appropriate training and specific authorization by a judge of the circuit court to which the officer is assigned.

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

§ 53.1-145. (Delayed effective date) Powers and duties of probation and parole officers.

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

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

2. *Except those persons placed in probation supervision programs established under §§ 53.1-181 and 53.1-182.1*, supervise and assist all persons within his territory placed on probation or post-release supervision pursuant to § 19.2-295.2, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation or post-release supervision and instruct him therein;

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

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

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

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

7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Board and upon certification of appropriate training and specific authorization by a judge of the circuit court to which the officer is assigned.

Nothing in this article shall require probation and parole officers to investigate or supervise cases before family courts.

§ 53.1-180. Purpose.

It is the purpose of this article to enable any city, county or combination thereof to develop, establish and maintain community-based corrections programs to provide the judicial system with sentencing alternatives for certain misdemeanants or *persons convicted of nonviolent offenders felonies*, as defined in § 19.2-316.1, for whom the court may impose a jail sentence and who may require less than institutional custody.

The article shall be interpreted and construed so as to effect the following purposes:

1. To allow individual cities, counties, or combinations thereof greater flexibility and involvement in responding to the problem of crime in their communities;

2. To provide more effective protection of society and to promote efficiency and economy in the delivery of correctional services;

3. To provide increased opportunities for offenders to make restitution to victims of crimes through financial reimbursement or community service;

4. To permit cities, counties or combinations thereof to operate *and utilize* programs *and services* specifically designed to meet the rehabilitative needs of selected offenders; and

5. To provide appropriate post-sentencing alternatives in localities for certain offenders with the goal of reducing the incidence of repeat offenders.

§ 53.1-181. Establishment of program; use of supervised probation not to be decreased.

To facilitate local involvement and flexibility in responding to the problem of crime in their communities and to permit locally designed programs which will fit its needs, any city, county or combination thereof may, and any city, county or combination thereof which is required by § 53.1-82.1 to file a community corrections plan shall, establish a system of community-based services pursuant to this article. This system is to provide alternative programs for those offenders who are convicted and

sentenced by or receive services through a court and who are considered suitable candidates for programs which require less than incarceration in a local correctional facility. Such programs and services may be provided by qualified public agencies or private, ~~nonprofit~~ agencies pursuant to appropriate contracts.

§ 53.1-183. Community criminal justice boards.

Each county or city or combination thereof developing and establishing a community corrections program pursuant to the provisions of this article shall establish a community criminal justice board. Each county and city participating in a community corrections program shall be represented on ~~a the~~ community criminal justice board. ~~The board shall include an equal number of appointments to be made by the governing body of each county or city participating in the program. In addition, the following shall be members of the board in a total number equal to local governing body representatives less one: the chief judges of the circuit court; Appointments to the board shall be made by each local governing body. In cases of multijurisdictional participation, the local governing body of each participating city or county shall agree upon those appointments, and, unless otherwise agreed upon, each participating city or county shall have an equal number of appointments. Boards shall be limited to fifteen members, except in cases of multijurisdictional boards which shall be limited to twenty members. Each board shall include representatives of the following: a judge of the general district court, and the; a circuit court judge; a juvenile and domestic relations district court of each participating city or county judge; the a chief magistrate; one chief of police of each participating city or county or the sheriff in a county jurisdiction not served by a police department to represent law enforcement; the an attorney for the Commonwealth of each participating city or county; a public defender or an attorney from a participating city or county who is experienced in the defense of criminal matters; to be appointed by the chief judges of the circuit courts; a sheriff and or the regional jail administrator or the sheriff in those cities or counties not served by a regional jail responsible for jails serving those jurisdictions involved in the community-based corrections program; a representative of local education; and a representative of the community services boards.~~

§ 53.1-184. Withdrawal from program.

Any participating city or county may, at the beginning of any calendar quarter, by ordinance or resolution of its governing authority, notify the Director of *the Department of Criminal Justice Services* of its intention to withdraw from the community corrections program. Such withdrawal shall be effective as of the last day of the quarter in which such notice is given.

§ 53.1-185. Responsibilities of community criminal justice boards.

~~It shall be the responsibility of community criminal justice boards to: On behalf of the counties, cities, or combinations thereof which they represent, the community criminal justice boards shall have the responsibility to:~~

1. Provide for the purchase, development and operation of community programs, services, and facilities for use by the courts in diverting offenders from local correctional facility placements;
2. Assist community agencies and organizations in establishing and modifying programs and services for offenders on the basis of an objective assessment of the community's needs and resources;
3. Evaluate and monitor community programs, services and facilities to determine their impact on offenders;

4. *Develop and amend the community corrections plan in accordance with guidelines and standards set forth by the Department of Criminal Justice Services for approval by participating local governing bodies; and*

5. Do all things necessary or convenient to carry out the responsibilities expressly given in this article.

§ 53.1-185.2. Funding; failure to comply; prohibited use of funds.

A. Counties and cities shall be required to establish a community corrections program under this article only to the extent funded by the Commonwealth through the general appropriation act.

B. The Department of Criminal Justice Services shall periodically review each program established under this article to determine compliance with the submitted plan and operating standards. If the Department of *Criminal Justice Services* determines that a program is not in substantial compliance with the submitted plan or standards, the Department of *Criminal Justice Services* may suspend all or any portion of financial aid made available to the locality for purposes of this article until there is compliance.

C. Funding shall be used for the provision of services and operation of programs and facilities but shall not be used for capital expenditures.

D. The Department of *Criminal Justice Services*, in conjunction with local boards, shall establish a statewide system of supervision and intervention fees to be paid by offenders participating in programs established under this act for reimbursement towards the costs of their supervision.

E. Any supervision or intervention fees collected by local programs established under this act shall be collected pursuant to procedures established by the Department of Criminal Justice Services. All such fees shall be deposited in the general fund in accordance with procedures established by the Department of Criminal Justice Services.

§ 53.1-185.3. City or county to act as administrator and fiscal agent.

Each community criminal justice board shall select a participating city or county, with its consent, to act as administrator and fiscal agent for the *funds awarded for purposes of implementing the community corrections* program.