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HOUSE BILL NO. 2236

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 27, 2021)

(Patron Prior to Substitute—Delegate Bell)

A BILL to amend and reenact §§ 9.1-175 and 18.2-254.3 of the Code of Virginia, relating to behavioral health docket; transfer of supervision.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-175 and 18.2-254.3 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-175. Board to prescribe standards; biennial plan.

The Board shall approve standards as prescribed by the Department for the development, implementation, operation, and evaluation of local community-based probation services and facilities authorized by this article, *which shall include standards for the transfer of supervision between local community-based probation agencies*. Any city, county, or combination thereof which establishes and provides local community-based probation services pursuant to this article shall submit a biennial criminal justice plan to the Department for review and approval.

§ 18.2-254.3. Behavioral Health Docket Act.

A. This section shall be known and may be cited as the "Behavioral Health Docket Act."

B. The General Assembly recognizes the critical need to promote public safety and reduce recidivism by addressing co-occurring behavioral health issues, such as mental illness and substance abuse, related to persons in the criminal justice system. It is the intention of the General Assembly to enhance public safety by facilitating the creation of behavioral health dockets to accomplish this purpose.

C. The goals of behavioral health dockets shall include (i) reducing recidivism; (ii) increasing personal, familial, and societal accountability among offenders through ongoing judicial intervention; (iii) addressing mental illness and substance abuse that contribute to criminal behavior and recidivism; and (iv) promoting effective planning and use of resources within the criminal justice system and community agencies. Behavioral health dockets promote outcomes that will benefit not only the offender but society as well.

D. Behavioral health dockets are specialized criminal court dockets within the existing structure of Virginia's court system that enable the judiciary to manage its workload more efficiently. Under the leadership and regular interaction of presiding judges, and through voluntary offender participation, behavioral health dockets shall address offenders with mental health conditions and drug addictions that contribute to criminal behavior. Behavioral health dockets shall employ evidence-based practices to diagnose behavioral health illness and provide treatment, enhance public safety, reduce recidivism, ensure offender accountability, and promote offender rehabilitation in the community. Local officials shall complete a planning process recognized by the state behavioral health docket advisory committee before establishing a behavioral health docket program.

E. Administrative oversight of implementation of the Behavioral Health Docket Act shall be conducted by the Supreme Court of Virginia. The Supreme Court of Virginia shall be responsible for (i) providing oversight of the distribution of funds for behavioral health dockets; (ii) providing technical assistance to behavioral health dockets; (iii) providing training to judges who preside over behavioral health dockets; (iv) providing training to the providers of administrative, case management, and treatment services to behavioral health dockets; and (v) monitoring the completion of evaluations of the effectiveness and efficiency of behavioral health dockets in the Commonwealth.

F. A state behavioral health docket advisory committee shall be established in the judicial branch. The committee shall be chaired by the Chief Justice of the Supreme Court of Virginia, who shall appoint a vice-chair to act in his absence. The membership of the committee shall include a behavioral health circuit court judge, a behavioral health general district court judge, a behavioral health juvenile and domestic relations district court judge, the Executive Secretary of the Supreme Court or his designee, the Governor or his designee, and a representative from each of the following entities: the Commonwealth's Attorneys' Services Council, the Virginia Court Clerks' Association, the Virginia Indigent Defense Commission, the Department of Behavioral Health and Developmental Services, the Virginia Organization of Consumers Asserting Leadership, a community services board or behavioral health authority, and a local community-based probation and pretrial services agency.

G. Each jurisdiction or combination of jurisdictions that intend to establish a behavioral health docket or continue the operation of an existing behavioral health docket shall establish a local behavioral health docket advisory committee. Jurisdictions that establish separate adult and juvenile behavioral health dockets may establish an advisory committee for each such docket. Each local behavioral health docket advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and

60 operation of the behavioral health dockets that serve the jurisdiction or combination of jurisdictions.
61 Advisory committee membership may include, but shall not be limited to, the following persons or their
62 designees: (i) the behavioral health docket judge; (ii) the attorney for the Commonwealth or, where
63 applicable, the city or county attorney who has responsibility for the prosecution of misdemeanor
64 offenses; (iii) the public defender or a member of the local criminal defense bar in jurisdictions in which
65 there is no public defender; (iv) the clerk of the court in which the behavioral health docket is located;
66 (v) a representative of the Virginia Department of Corrections or the Department of Juvenile Justice, or
67 both, from the local office that serves the jurisdiction or combination of jurisdictions; (vi) a
68 representative of a local community-based probation and pretrial services agency; (vii) a local
69 law-enforcement officer; (viii) a representative of the Department of Behavioral Health and
70 Developmental Services or a representative of local treatment providers, or both; (ix) a representative of
71 the local community services board or behavioral health authority; (x) the behavioral health docket
72 administrator; (xi) a public health official; (xii) the county administrator or city manager; (xiii) a
73 certified peer recovery specialist; and (xiv) any other persons selected by the local behavioral health
74 docket advisory committee.

75 H. Each local behavioral health docket advisory committee shall establish criteria for the eligibility
76 and participation of offenders who have been determined to have problems with drug addiction, mental
77 illness, or related issues. The committee shall ensure the use of a comprehensive, valid, and reliable
78 screening instrument to assess whether the individual is a candidate for a behavioral health docket. Once
79 an individual is identified as a candidate appropriate for a behavioral health court docket, a full
80 diagnosis and treatment plan shall be prepared by qualified professionals.

81 Subject to the provisions of this section, neither the establishment of a behavioral health docket nor
82 anything in this section shall be construed as limiting the discretion of the attorney for the
83 Commonwealth to prosecute any criminal case arising therein that he deems advisable to prosecute,
84 except to the extent that the participating attorney for the Commonwealth agrees to do so.

85 I. Each local behavioral health docket advisory committee shall establish policies and procedures for
86 the operation of the docket to attain the following goals: (i) effective integration of appropriate treatment
87 services with criminal justice system case processing; (ii) enhanced public safety through intensive
88 offender supervision and treatment; (iii) prompt identification and placement of eligible participants; (iv)
89 efficient access to a continuum of related treatment and rehabilitation services; (v) verified participant
90 abstinence through frequent alcohol and other drug testing and mental health status assessments, where
91 applicable; (vi) prompt response to participants' noncompliance with program requirements through a
92 coordinated strategy; (vii) ongoing judicial interaction with each behavioral health docket participant;
93 (viii) ongoing monitoring and evaluation of program effectiveness and efficiency; (ix) ongoing
94 interdisciplinary education and training in support of program effectiveness and efficiency; and (x)
95 ongoing collaboration among behavioral health dockets, public agencies, and community-based
96 organizations to enhance program effectiveness and efficiency.

97 J. If there is cause for concern that a defendant was experiencing a crisis related to a mental health
98 or substance abuse disorder then his case will be referred, if such referral is appropriate, to a behavioral
99 health docket to determine eligibility for participation. Participation by an offender in a behavioral health
100 docket shall be voluntary and made pursuant only to a written agreement entered into by and between
101 the offender and the Commonwealth with the concurrence of the court. *If an offender determined to be*
102 *eligible to participate in a behavioral health docket resides in a locality other than that in which the*
103 *behavioral health docket is located, or such offender desires to move to a locality other than that in*
104 *which the behavioral health docket is located, and the court determines it is practicable and*
105 *appropriate, the supervision of such offender may be transferred to a supervising agency in the new*
106 *locality. If the receiving agency accepts the transfer, it shall confirm in writing that it can and will*
107 *comply with all of the conditions of supervision of the behavioral health docket, including the frequency*
108 *of in-person and other contact with the offender and updates from the offender's treatment providers. If*
109 *the receiving agency cannot comply with the conditions of supervision, the agency shall deny the*
110 *transfer in writing and the sending agency shall notify the court. Where supervision is transferred, the*
111 *sending agency shall be responsible for providing reports on an offender's conduct, treatment, and*
112 *compliance with the conditions of supervision to the court.*

113 K. An offender may be required to contribute to the cost of the treatment he receives while
114 participating in a behavioral health docket pursuant to guidelines developed by the local behavioral
115 health docket advisory committee.

116 L. Nothing contained in this section shall confer a right or an expectation of a right to treatment for
117 an offender or be construed as requiring a local behavioral health docket advisory committee to accept
118 for participation every offender.

119 M. The Office of the Executive Secretary shall, with the assistance of the state behavioral health
120 docket advisory committee, develop a statewide evaluation model and conduct ongoing evaluations of
121 the effectiveness and efficiency of all behavioral health dockets. The Executive Secretary shall submit an

122 annual report of these evaluations to the General Assembly by December 1 of each year. The annual
123 report shall be submitted as a report document as provided in the procedures of the Division of
124 Legislative Automated Systems for the processing of legislative documents and reports and shall be
125 posted on the General Assembly's website. Each local behavioral health docket advisory committee shall
126 submit evaluative reports, as provided by the Behavioral/Mental Health Docket Advisory Committee, to
127 the Office of the Executive Secretary as requested.