VIRGINIA ACTS OF ASSEMBLY -- 1994 SPECIAL SESSION II

CHAPTER 2

An Act to amend and reenact §§ 18.2-10, 19.2-297.1, 19.2-299, 53.1-20, 53.1-20.1, 53.1-32.1, 53.1-116, 53.1-145, as it is effective and as it may become effective, 53.1-150, 53.1-180 through 53.1-184, 53.1-184.2, 53.1-185, 53.1-185.1, 53.1-187, 53.1-189 and 53.1-191 of the Code of Virginia; to amend the Code of Virginia by adding in Title 17 a chapter numbered 11, consisting of sections numbered 17-232 through 17-238, by adding in Chapter 9 of Title 19.2 an article numbered 5, consisting of sections numbered 19.2-152.2 through 19.2-152.7, by adding sections numbered 19.2-295.2, 19.2-298.01, 19.2-303.3 and 19.2-305.3, by adding in Chapter 18 of Title 19.2 an article numbered 4, consisting of a section numbered 19.2-316.2 and an article numbered 5, consisting of a section numbered 19.2-316.3, by adding in Article 2 of Chapter 2 of Title 53.1 a section numbered 53.1-40.01, by adding in Chapter 2 of Title 53.1 an article numbered 6, consisting of sections numbered 53.1-67.2 through 53.1-67.6, an article numbered 7, consisting of a section numbered 53.1-67.7, and an article numbered 8, consisting of a section numbered 53.1-67.8, by adding in Article 3 of Chapter 4 of Title 53.1 a section numbered 53.1-165.1, by adding a section numbered 53.1-182.1, by adding in Article 2 of Chapter 5 of Title 53.1 sections numbered 53.1-185.2 and 53.1-185.3, by adding in Article 2 of Chapter 6 of Title 53.1 a section numbered 53.1-197.1, by adding in Article 3 of Chapter 6 of Title 53.1 a section numbered 53.1-202.1 and by adding in Chapter 6 of Title 53.1 an article numbered 4, consisting of sections numbered 53.1-202.2, 53.1-202.3 and 53.1-202.4; and to repeal § 53.1-184.1 of the Code of Virginia, all relating to abolition of parole and good conduct allowance; creation of the Virginia Criminal Sentencing Commission; felony criminal sentencing; earned sentence credits; discretionary sentencing guidelines; commitment of offenders; conditional release of geriatric prisoners; compensation of local jails; limitation of applicability of statutes; creation of the Statewide Community-Based Corrections System for State-Responsible Offenders; creation of the Pretrial Services Act; creation of the Diversion Center Incarceration Program; day fines; creation of the Detention Center Incarceration Program; Community Corrections Incentive Act; penalties.

[H 5001]

Approved October 13, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-10, 19.2-297.1, 19.2-299, 53.1-20, 53.1-20.1, 53.1-32.1, 53.1-116, 53.1-145, as it is effective and as it may become effective, 53.1-150, 53.1-180 through 53.1-184, 53.1-184.2, 53.1-185, 53.1-185.1, 53.1-187, 53.1-189 and 53.1-191 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 17 a chapter numbered 11, consisting of sections numbered 17-232 through 17-238, by adding in Chapter 9 of Title 19.2 an article numbered 5, consisting of sections numbered 19.2-152.2 through 19.2-152.7, by adding sections numbered 19.2-295.2, 19.2-298.01, 19.2-303.3 and 19.2-305.3, by adding in Chapter 18 of Title 19.2 an article numbered 4, consisting of a section numbered 19.2-316.2 and an article numbered 5, consisting of a section numbered 19.2-316.3, by adding in Article 2 of Chapter 2 of Title 53.1 a section numbered 53.1-40.01, by adding in Chapter 2 of Title 53.1 an article numbered 6, consisting of sections numbered 53.1-67.2 through 53.1-67.6, an article numbered 7, consisting of a section numbered 53.1-67.7, and an article numbered 8, consisting of a section numbered 53.1-67.8, by adding in Article 3 of Chapter 4 of Title 53.1 a section numbered 53.1-165.1, by adding a section numbered 53.1-182.1, by adding in Article 2 of Chapter 5 of Title 53.1 sections numbered 53.1-185.2 and 53.1-185.3, by adding in Article 2 of Chapter 6 of Title 53.1 a section numbered 53.1-197.1, by adding in Article 3 of Chapter 6 of Title 53.1 a section numbered 53.1-202.1 and by adding in Chapter 6 of Title 53.1 an article numbered 4, consisting of sections numbered 53.1-202.2, 53.1-202.3 and 53.1-202.4, as follows:

CHAPTER 11.

VIRGINIA CRIMINAL SENTENCING COMMISSION.

§ 17-232. Virginia Criminal Sentencing Commission created.

There is hereby created within the judicial branch as an agency of the Supreme Court of Virginia, the Virginia Criminal Sentencing Commission, hereinafter referred to in this chapter as the Commission.

§ 17-233. Purpose.

The General Assembly, to ensure the imposition of appropriate and just criminal penalties, and to make the most efficient use of correctional resources, especially for the effective incapacitation of violent criminal offenders, has determined that it is in the best interest of the Commonwealth to develop, implement, and revise discretionary sentencing guidelines. The purposes of the Commission established under this chapter are to assist the judiciary in the imposition of sentences by establishing a system of

discretionary guidelines and to establish a discretionary sentencing guidelines system which emphasizes accountability of the offender and of the criminal justice system to the citizens of the Commonwealth.

The Commission shall develop discretionary sentencing guidelines to achieve the goals of certainty, consistency, and adequacy of punishment with due regard to the seriousness of the offense, the dangerousness of the offender, deterrence of individuals from committing criminal offenses and the use of alternative sanctions, where appropriate.

§ 17-234. Membership; compensation.

A. The Commission shall be composed of seventeen members as follows:

1. Six judges or justices, who may be judges of a circuit court who regularly hear criminal cases or judges or justices of the Supreme Court or the Court of Appeals, to be appointed by the Chief Justice of the Supreme Court of Virginia;

2. One person who is not an active member of the judiciary, to be appointed as Chairman by the Chief Justice of the Supreme Court of Virginia subject to confirmation by the General Assembly provided that the person initially appointed chairman shall be authorized to act pending confirmation by the 1995 Regular Session of the General Assembly;

3. Three persons to be appointed by the Speaker of the House of Delegates;

4. Two persons to be appointed by the Senate Committee on Privileges and Elections;

5. Four persons to be appointed by the Governor; and

6. The Attorney General of Virginia.

B. Appointments to the Commission shall be for terms of three years. Members shall not be eligible to serve more than two consecutive full terms except for the Attorney General who shall serve by virtue of his office.

C. Members of the Commission shall receive compensation as provided in § 14.1-18, and all members of the Commission shall be paid their necessary expenses incurred in the performance of their duties.

§ 17-235. Powers and duties.

The Commission shall:

1. Develop, maintain and modify as may be deemed necessary, a proposed system of statewide discretionary sentencing guidelines for use in all felony cases which will take into account historical data, when available, concerning time actually served for various felony offenses committed prior to January 1, 1995, and sentences imposed for various felony offenses committed on or after January 1, 1995, and such other factors as may be deemed relevant to sentencing.

2. Prepare, periodically update, and distribute sentencing worksheets for the use of sentencing courts which, when used, will produce a recommended sentencing range for a felony offense in accordance with the discretionary sentencing guidelines established pursuant to subdivision 1.

3. Prepare, periodically update, and distribute a form for the use of sentencing courts which will assist such courts in recording the reason or reasons for any sentence imposed in a felony case which is greater or less than the sentence recommended by the discretionary sentencing guidelines.

4. Prepare guidelines for sentencing courts to use in determining appropriate candidates for alternative sanctions which may include, but not be limited to (i) fines and day fines, (ii) boot camp incarceration, (iii) local correctional facility incarceration, (iv) diversion center incarceration, (v) detention center incarceration, (vi) home incarceration/electronic monitoring, (vii) day or evening reporting, (viii) probation supervision, (ix) intensive probation supervision, and (x) performance of community service.

5. Develop an offender risk assessment instrument for use in all felony cases, based on a study of Virginia felons, that will be predictive of the relative risk that a felon will become a threat to public safety.

6. Apply the risk assessment instrument to offenders convicted of any felony that is not specified in (i) subdivision 1, 2 or 3 of subsection A of § 17-237 or (ii) subsection C of § 17-237 under the discretionary sentencing guidelines, and shall determine, on the basis of such assessment and with due regard for public safety needs, the feasibility of achieving the goal of placing twenty-five percent of such offenders in one of the alternative sanctions listed in subsection 4. If the Commission so determines that achieving the twenty-five percent or a higher percentage goal is feasible, it shall incorporate such goal into the discretionary sentencing guidelines, to become effective on January 1, 1996. If the Commission so determines that achieving the goal is not feasible, the Commission shall report that determination to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia on or before December 1, 1995, and shall make such recommendations as it deems appropriate.

7. Monitor sentencing practices in felony cases throughout the Commonwealth, including the use of the discretionary sentencing guidelines, and maintain a database containing the information obtained.

8. Monitor felony sentence lengths, crime trends, correctional facility population trends and correctional resources and make recommendations regarding projected correctional facilities capacity requirements and related correctional resource needs.

9. Study felony statutes in the context of judge-sentencing and jury-sentencing patterns as they evolve after January 1, 1995, and make recommendations for the revision of general criminal offense statutes

to provide more specific offense definitions and more narrowly prescribed ranges of punishment.

10. Report upon its work and recommendations annually on or before December 1 to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia.

11. Perform such other functions as may be otherwise required by law or as may be necessary to carry out the provisions of this chapter.

§ 17-236. Meetings; staff support.

A. Regular meetings of the Commission shall be held on a quarterly basis and at such other times as the Chairman may determine. Nine members of the Commission shall constitute a quorum. The Commission may hold public hearings.

B. The Commission may appoint a director and fix his duties and compensation. The Director may, with prior approval of the Commission, employ and fix the duties and compensation of such adequate staff as may be requisite to carry out the duties of the Commission. Other professional personnel, consultants and secretarial and clerical employees may be employed or contracted upon such terms and conditions as set forth by the Commission. The salaries, per diem and other expenses necessary to the functions of the Commission shall be payable from funds appropriated to the Commission. Adequate office space shall be provided by the Executive Secretary of the Supreme Court.

C. All agencies of the Commonwealth, their staffs and employees shall provide the Commission with necessary information for the performance of its duties.

§ 17-237. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery, shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than forty years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of forty years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of forty years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than forty years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of forty years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving or distributing, or possessing with the intent to manufacture, sell, give or distribute a Schedule I or II controlled substance shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than forty years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of forty years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2 or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than forty years, and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of forty years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. However, for purposes of subdivision A 4 of this section, only convictions occurring within sixteen years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions."

C. For purposes of this chapter, violent felony offenses shall include any violation of §§ 18.2-31, 18.2-32, 18.2-33, 18.2-35, 18.2-40 or § 18.2-41; any Class 5 felony violation of § 18.2-47; any felony violation of §§ 18.2-48, 18.2-48.1, or § 18.2-49; any violation of §§ 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-52, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or § 18.2-55, or any felony violation of § 18.2-57.2; any violation of § 18.2-58 or § 18.2-58.1; any felony violation of § 18.2-60.1 or § 18.2-60.3; any violation of §§ 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-67.3 or § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92 or § 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of §§ 18.2-153, 18.2-154 or § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any violation of subsection B of § 18.2-280; any violation of §§ 18.2-281, 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of subsection A of § 18.2-300; any felony violation of §§ 18.2-308.1 and 18.2-308.2; any violation of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or § 18.2-312; any violation of subdivision (2) or (3) of § 18.2-355; any violation of § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of §§ 18.2-368, 18.2-370 or § 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or § 18.2-406; any violation of §§ 18.2-408, 18.2-413, 18.2-414 or § 18.2-433.2; any felony violation of §§ 18.2-460, 18.2-474.1 or § 18.2-477.1; any violation of §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485; any violation of § 53.1-203; or any conspiracy or attempt to commit any offense specified in this subsection, and any substantially similar offense under the laws of any state, the District of Columbia, the United States or its territories.

§ 17-238. Sentencing guidelines modifications; effective date.

After adoption of the initial guidelines, any modification to the discretionary sentencing guidelines adopted by the Commission shall be contained in the annual report required under § 17-235 and shall, unless otherwise provided by law, become effective on the next following July 1.

§ 18.2-10. Punishment for conviction of felony.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, or imprisonment for life and, subject to subdivision (g), a fine of not more than $100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than twenty years and, subject to subdivision (g), a fine of not more than $100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than twenty years and, subject to subdivision (g), a fine of not more than $100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than ten years and, subject to subdivision (g), a fine of not more than $100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than ten years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than $2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than $2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only.

For any felony offense committed on or after January 1, 1995, the court may impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

Article 5.

Pretrial Services Act.

§ 19.2-152.2. Purpose; establishment of program.

It is the purpose of this article to provide more effective protection of society by establishing programs which will assist judicial officers in discharging their duties pursuant to §§ 19.2-121 and 19.2-123. Such programs are intended to provide better information and services for use by judicial officers in determining the risk to public safety and the assurance of appearance of persons held in custody and charged with an offense, other than an offense punishable by death, who are pending trial or hearing. Any city, county or combination thereof may establish a pretrial services program and any city, county or combination thereof required to submit a community-based corrections plan pursuant to § 53.1-82.1 shall establish a pretrial services program.

§ 19.2-152.3. Department of Criminal Justice Services to prescribe standards; biennial plan.

The Department of Criminal Justice Services shall prescribe standards for the development, implementation, operation and evaluation of programs authorized by this article. The Department of Criminal Justice Services shall develop risk assessment and other instruments to be used by pretrial services programs in assisting judicial officers in discharging their duties pursuant to §§ 19.2-121 and 19.2-123. Any city, county or combination thereof which establishes a pretrial services program pursuant to this article shall submit a biennial plan to the Department of Criminal Justice Services for review and approval.

§ 19.2-152.4. Mandated services.

Any city, county or combination thereof which elects or is required to establish a pretrial services program shall provide all information and services for use by judicial officers as set forth in §§ 19.2-121 and 19.2-123.

§ 19.2-152.5. Community criminal justice boards.

Each city, county or combination thereof establishing a pretrial services program shall also establish a community criminal justice board pursuant to § 53.1-183.

§ 19.2-152.6. 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 Department of Criminal Justice Services of its intention to withdraw from the pretrial services program. Such withdrawal shall be effective as of the last day of the quarter in which such notice is given.

§ 19.2-152.7. Funding; failure to comply.

Counties and cities shall be required to establish a pretrial services program only to the extent funded by the Commonwealth through the general appropriation act. 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 determines that a program is not in substantial compliance with the submitted plan or standards, the Department may suspend all or any portion of financial aid made available to the locality for purposes of this article until there is compliance.

§ 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 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.

§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.

A. Any person convicted of two or more separate acts of violence when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction, shall, upon conviction of a third or subsequent act of violence, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

a. First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.);

b. Mob-related felonies under Article 2 (§ 18.2-38 et seq.);

c. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.);

d. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.);

e. Robbery under § 18.2-58 and carjacking under § 18.2-58.1; or

f. Any criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.);

(ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this section.

B. Prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed under "act of violence" if such offense would be a felony if committed in the Commonwealth.

The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole and shall not be eligible for any good conduct allowance *or any earned sentence credits* under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section *(i)* who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed *or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed* may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this subsection.

§ 19.2-298.01. Use of discretionary sentencing guidelines.

A. In all felony cases, other than Class 1 felonies, the court shall (i) have presented to it the appropriate discretionary sentencing guidelines worksheets and (ii) review and consider the suitability of the applicable discretionary sentencing guidelines established pursuant to Chapter 11 (§ 17-232 et seq.) of Title 17. Before imposing sentence, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case. In cases tried by a jury, the jury shall not be presented any information regarding sentencing guidelines.

B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure.

C. In felony cases, other than Class 1 felonies, tried by a jury and in felony cases tried by the court without a jury upon a plea of not guilty, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets. In felony cases tried upon a plea of guilty, including cases which are the subject of a plea agreement, the court may direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the accused, the court and the attorney for the Commonwealth, the worksheets may be prepared by the attorney for the Commonwealth.

D. Except as provided in subsection E, discretionary sentencing guidelines worksheets prepared pursuant to this section shall be subject to the same distribution as presentence investigation reports prepared pursuant to subsection A of § 19.2-299.

E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, a copy of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days.

F. The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis of any other post-conviction relief.

G. The provisions of this section shall apply only to felony cases in which the offense is committed on or after January 1, 1995, and for which there are discretionary sentencing guidelines.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried upon a felony charge and is adjudged guilty of such charge, the court may, or on the motion of the defendant shall, before imposing sentence direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9-169, of this or any other state or of the United States; ~~to the community corrections resources board,~~

~~as defined in § 53.1-183, where the accused has been referred by the court for placement in a community diversion program;~~ and to any agency where the accused is referred for treatment by the court or by probation and parole services, and shall be made available to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted involved a crime against the person, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

§ 19.2-303.3. Sentence to community-based corrections program or facility.

In any case in which the defendant has been convicted 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.

§ 19.2-305.3. Day fines; definition.

The court, when imposing a fine pursuant to §§ 18.2-10 and 18.2-11, may impose such fines based on a day fine schedule pursuant to this section.

For the purposes of this section, "day fines" means fines which are determined by the defendant's ability to pay and are available to the courts in a schedule based on units which match the statutory penalty for each offense and translate into dollar amounts.

The provisions of this section shall expire on July 1, 2001.

Article 4.

Detention Center Incarceration Program.

§ 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 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.

Article 5.

Diversion Center Incarceration Program.

§ 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 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.

§ 53.1-20. Commitment of convicted persons to custody of Director.

A. Beginning July 1, 1996, every person convicted of a felony *committed before January 1, 1995,* and sentenced to the Department for a total period of more than two years shall be committed by the court to the custody of the Director of the Department. The Director shall receive all such persons into

the state corrections system within sixty days of his receipt of the complete final order from the clerk of the committing court.

A1. Beginning July 1, 1996, every person convicted of a felony committed on or after January 1, 1995, and sentenced to the Department for a total period of one year or more or sentenced to confinement in jail for more than six months shall serve such sentence in the custody of the Department. The Director shall receive all such persons into the state corrections system within sixty days of his receipt of the complete final order from the clerk of the committing court.

B. Until July 1, 1996, persons convicted of felonies *committed before January 1, 1995,* and sentenced to the Department shall be committed to the custody of the Department and received by the Director into the state corrections system within sixty days of his receipt of the complete final order from the clerk of the committing court as follows:

1. From July 1, 1991, through June 30, 1992, all persons sentenced for a total period of more than six years.

2. From July 1, 1992, through June 30, 1993, all persons sentenced for a total period of more than five years.

3. From July 1, 1993, through June 30, 1994, all persons sentenced for a total period of more than four years.

4. From July 1, 1994, through June 30, 1996, all persons sentenced for a total period of more than three years.

5. From July 1, 1996, and thereafter, all persons sentenced for a total period of more than two years.

B1. Until July 1, 1996, persons convicted of felonies committed on or after January 1, 1995, and sentenced to the Department or sentenced to confinement in jail for more than six months shall be placed in the custody of the Department and received by the Director into the state corrections system within sixty days of his receipt of the complete final order from the clerk of the committing court as follows:

1. From January 1, 1995, through June 30, 1996, all persons sentenced for a total period of one year or more.

2. From July 1, 1996, and thereafter, all persons sentenced for a total period of more than six months.

C. If the Governor finds that the number of prisoners in state facilities poses a threat to public safety, it shall be within the discretion of the Director to determine the priority for receiving prisoners into the state corrections system from local correctional facilities.

D. All felons sentenced to a period of incarceration and not placed in an adult state correctional facility pursuant to this section shall serve their sentences in local correctional facilities which shall not include a secure facility or detention home or local juvenile detention homes as defined in § 16.1-228.

E. Felons committed to the custody of the Department for a new felony offense shall be received by the Director into the state corrections system in accordance with the provisions of this section without any delay for resolution of (i) issues of alleged parole violations set for hearing before the Parole Board or (ii) any other pending parole-related administrative matter.

§ 53.1-20.1. Compensation of local jails for cost of incarceration.

Beginning July 1, 1996, if the Director is unable to accommodate in a state correctional facility any convicted ~~state~~ felon who is ~~sentenced to~~ *required to serve* a total period of more than ~~two years~~ *six months* in a state correctional facility, the Department of Corrections shall compensate local jails for the cost of incarceration beginning sixty days after the date of sentencing of such felon as provided for in the general appropriations act. Between July 1, 1991, and July 1, 1996, the Department shall compensate local jails, as provided for in the appropriations act, (i) for the cost of incarceration, on and after the date of sentencing, of any felon sentenced to the Department *for a felony committed before January 1, 1995,* whose sentence totals more than two years and whose transfer to a state correctional facility is not yet required pursuant to § 53.1-20, ~~and~~ (ii) *for the cost of incarceration, on and after the date of sentencing, of any felon required to serve a sentence in the Department for a felony committed on or after January 1, 1995, whose sentence totals more than six months and whose transfer to a state correctional facility is not yet required pursuant to § 53.1-20, (iii)* for the cost of incarceration of any felon sentenced to the Department *for a felony committed before January 1, 1995,* whose sentence totals more than two years and whose transfer to a state correctional facility is required pursuant to § 53.1-20 and who remains in the local jail for longer than sixty days after the Director's receipt of the complete final order sentencing such felon, *and (iv) for the cost of incarceration of any felon required to serve a sentence in the Department for a felony committed on or after January 1, 1995, whose sentence totals more than six months and whose transfer to a state correctional facility is required pursuant to § 53.1-20 and who remains in the local jail for longer than sixty days after the Director's receipt of the complete final orders sentencing such felon.*

§ 53.1-32.1. Classification system; program assignments; mandatory participation.

A. The Director shall maintain a system of classification which (i) evaluates all prisoners according to background, aptitude, education, and risk and (ii) based on an assessment of needs, determines appropriate program assignments including vocational and technical training, work activities and

employment, academic activities which at a minimum meet the requirements of § 22.1-344.1, counseling, alcohol and substance abuse treatment, and such related activities as may be necessary to assist prisoners in the successful transition to free society and gainful employment.

B. The Director shall, subject to the availability of resources and sufficient program assignments, place prisoners in appropriate full-time program assignments or a combination thereof to satisfy the objectives of a treatment plan based on an assessment and evaluation of each prisoner's needs. Compliance with specified program requirements and attainment of specific treatment goals shall be required as a condition of placement and continuation in such program assignments. The Director may suspend programs in the event of an institutional emergency.

C. For the purposes of implementing the requirements of subsection B, prisoners shall be required to participate in such programs according to the following schedule:

1. From July 1, 1994, through June 30, 1995, an average of twenty-four hours per week.
2. From July 1, 1995, through June 30, 1996, an average of twenty-eight hours per week.
3. From July 1, 1996, through June 30, 1997, an average of thirty hours per week.
4. From July 1, 1997, through June 30, 1998, an average of thirty-six hours per week.
5. From July 1, 1998, and thereafter, an average of forty hours per week.

D. Notwithstanding any other provision of law, prisoners refusing to accept a program assignment shall not be eligible for good conduct allowances *or earned sentence credits* authorized pursuant to Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. Such refusal shall also constitute a violation of the rules authorized pursuant to § 53.1-25 and the Director shall prescribe appropriate disciplinary action.

E. The Director shall maintain a master program listing, by facility and program location, of all available permanent and temporary positions. The Director may, consistent with § 53.1-43 and subject to the approval of the Board, establish a system of pay incentives for such assignments based upon difficulty and level of effort required.

F. Inmates employed pursuant to Article 2 (§ 53.1-32 et seq.) of Chapter 2 of this title shall not be deemed employees of the Commonwealth of Virginia or its agencies and shall be ineligible for benefits under Chapter 10 (§ 2.1-110 et seq.) of Title 2.1, Chapter 6 (§ 60.2-600 et seq.) of Title 60.2, Chapter 5 (§ 65.2-500 et seq.) of Title 65.2 or any other provisions of the Code pertaining to the rights of state employees.

§ 53.1-40.01. Conditional release of geriatric prisoners.

Any person serving a sentence imposed upon a conviction for a felony offense, other than a Class 1 felony, committed on or after January 1, 1995, (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this section.

Article 6.

Statewide Community-Based Corrections System for State-Responsible Offenders.

§ 53.1-67.2. Purpose.

The purposes of this article are to (i) provide effective protection of society and (ii) provide efficient and economical correctional services by establishing and maintaining appropriate sanction alternatives and by assisting state-responsible offenders who are incarcerated in returning to society as productive citizens, with the goal of reducing the incidence of repeat offenders.

§ 53.1-67.3. Establishment of system.

The Director shall establish a statewide community-based system of programs, services and residential and nonresidential facilities for (i) those state-responsible offenders convicted of felonies and sentenced to alternative forms of punishment and (ii) those state-responsible offenders who the Director has determined, after a period of incarceration in a state or local correctional facility, require less secure confinement or a lower level of supervision. Facilities established pursuant to this article may be partially or completely physically restrictive with varying levels and types of offender control.

§ 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.

§ 53.1-67.5. Board to prescribe standards.

The Board shall prescribe standards for the development, implementation, operation, and evaluation of programs, services and facilities authorized by this article. The Board shall also prescribe guidelines for the transfer of offenders from a state or local correctional facility who the Director has determined should be placed in programs or facilities authorized under this article.

§ 53.1-67.6. Minimum programs.

The Statewide Community-Based Corrections System shall include, but not be limited to, the following programs, services and facilities: regular and intensive probation supervision, regular and

intensive parole supervision for those state-responsible offenders sentenced for an offense committed prior to January 1, 1995, home/electronic incarceration, diversion center incarceration, boot camp incarceration, detention center incarceration, work release, pre-release centers, probation-violator and parole-violator centers, halfway houses and, for selected offenders, drug testing and treatment. The programs, facilities, and services required under this article shall be made available to each judicial circuit, but the manner in which such are provided shall be determined by the Board. Additional programs, services, and facilities may be established by the Board.

Article 7.

Diversion Center Incarceration Program.

§ 53.1-67.7. Establishment of program.

The Department is authorized to establish and maintain a system of residential diversion centers for probationers who require more security and supervision than provided by intensive probation supervision and who are committed to the Department under § 19.2-316.3. The program shall include components for ensuring compliance with terms and conditions of probation; ensuring restitution and performance of community service; payment of fines, if any, and costs of court; providing assistance in securing and maintaining employment; providing access to substance abuse testing and treatment; and providing other programs which will assist the probationer in returning to society as a productive citizen.

Probationers confined in a diversion incarceration center may be allowed to leave the facility only for purposes expressly authorized by the Director.

Article 8.

Detention Center Incarceration Program.

§ 53.1-67.8. Establishment of program.

The Department is authorized to establish and maintain a system of residential detention centers to provide a highly structured, short-term period of incarceration for individuals committed to the Department under the provisions of § 19.2-316.2. The program shall include components for military-style management and supervision, physical labor in organized public works projects, counseling, remedial education, substance abuse testing and treatment, and community re-entry services.

§ 53.1-116. What records jailer shall keep; how time deducted or added; payment of fine and costs by person committed to jail until he pays.

A. The jailer shall keep a record describing each person committed to jail, the terms of confinement, for what offense or cause he was committed, and when received into jail. The jailer shall keep a record of each prisoner. Each prisoner not eligible for parole under §§ 53.1-151, 53.1-152 or § 53.1-153 shall earn good conduct credit at the rate of one day for each one day served, including all days served while confined in jail prior to conviction and sentencing, in which the prisoner has not violated the written rules and regulations of the jail unless a mandatory minimum sentence is imposed by law*; however, any prisoner committed to jail upon a felony offense committed on or after January 1, 1995, shall not earn any good conduct credit*. Prisoners eligible for parole under §§ 53.1-151, 53.1-152 or § 53.1-153 shall earn good conduct credit at a rate of fifteen days for each thirty days served with satisfactory conduct. The jailer may grant the prisoner additional credit for performance of institutional work assignments at the rate of five days for every thirty days served. The time so deducted shall be allowed to each prisoner for such time as he is confined in jail. For each violation of the rules prescribed herein, the time so deducted shall be added until it equals the full sentence imposed upon the prisoner by the court. So much of an order of any court contrary to the provisions of this section shall be deemed null and void.

B. Notwithstanding the provisions of § 19.2-350, in the event a person who was committed to jail to be therein confined until he pays a fine imposed on him by the court in which he was tried should desire to pay such fine and costs, he may pay the same to the person in charge of the jail. The person receiving such moneys shall execute and deliver an official receipt therefor and shall promptly transmit the amount so paid to the clerk of the court which imposed the fine and costs. Such clerk shall give him an official receipt therefor and shall properly record the receipt of such moneys.

§ 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. 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. 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.

§ 53.1-150. Contributions by persons on parole, probation, and work release.

A. Any person convicted of a felony, multiple felonies or a combination of felonies and misdemeanors and who is sentenced to incarceration in a local or state correctional facility, or who is granted suspension of sentence and probation by a court of competent jurisdiction, or who is participating in a community ~~diversion~~ *corrections* program as provided in § 53.1-181, or who is participating in a home/electronic incarceration program as provided in § 53.1-131.2, shall be required to pay a fee of $200 towards the cost of his confinement, supervision or participation as a condition of his sentence.

Any person convicted of a misdemeanor or multiple misdemeanors and who is sentenced to

incarceration in a local correctional facility, or who is granted suspension of sentence and probation by a court of competent jurisdiction, or who is participating in a community ~~diversion~~ *corrections* program as provided in § 53.1-181, or who is participating in a home/electronic incarceration program as provided in § 53.1-131.2, shall be required to pay a fee of fifty dollars towards the cost of his confinement, supervision or participation as a condition of his sentence.

In the event of multiple convictions under any of the above provisions, the fees imposed herein shall be assessed on a pro rata basis. Such fees shall be in addition to any other costs or fees provided by law.

All fees assessed pursuant to this section for the cost of confinement, supervision or participation shall be paid to the clerk of the sentencing court. All such funds collected pursuant to this section shall be deposited in the general fund of the state treasury.

B. The sentencing court may exempt a defendant from the requirements of subsection A on the grounds of unreasonable hardship.

Any defendant who is exempted from the requirements of subsection A shall be required to perform community service as an alternative to the contribution toward the cost of his confinement, supervision or participation.

C. Any person (i) who is granted parole or (ii) who participates in a work release program pursuant to the provisions of §§ 53.1-60 and 53.1-131 shall be required to pay the fee required in subsection A as a condition of parole or work release.

§ 53.1-165.1. Limitation on the application of parole statutes.

The provisions of this article, except §§ 53.1-160 and 53.1-160.1, shall not apply to any sentence imposed or to any prisoner incarcerated upon a conviction for a felony offense committed on or after January 1, 1995. Any person sentenced to a term of incarceration for a felony offense committed on or after January 1, 1995, shall not be eligible for parole upon that offense.

Article 2.

Comprehensive Community ~~Diversion~~ *Corrections* ~~Incentive~~ Act *for Local-Responsible Offenders*.

§ 53.1-180. Purpose.

It is the purpose of this article to enable ~~localties,~~ ~~qualified~~ ~~private,~~ ~~nonprofit~~ ~~agencies~~ ~~or~~ ~~the~~ ~~Commonwealth~~ *any city, county or combination thereof* to develop, establish and maintain ~~community~~ ~~diversion~~ *community-based corrections* programs to provide the judicial system with sentencing alternatives for certain *misdemeanants or* nonviolent offenders*, 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 ~~localities,~~ ~~communites~~ ~~or~~ ~~the~~ ~~Commonwealth~~ *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 ~~localities,~~ ~~communities~~ ~~or~~ ~~the~~ ~~Commonwealth~~ *cities, counties or combinations thereof* to operate programs 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.

~~The~~ ~~Director~~ ~~is~~ ~~authorized~~ ~~to~~ ~~develop~~ ~~and~~ ~~enter~~ ~~into~~ ~~contracts,~~ ~~pursuant~~ ~~to~~ ~~the~~ ~~provisions~~ ~~of~~ ~~this~~ ~~article,~~ ~~for~~ ~~residential~~ ~~and~~ ~~nonresidential~~ ~~community~~ ~~diversion~~ ~~programs~~ ~~and~~ ~~services~~ ~~to~~ ~~provide~~ ~~the~~ ~~judicial~~ ~~system~~ ~~with~~ ~~sentencing~~ ~~alternatives~~ ~~for~~ ~~those~~ ~~offenders~~ ~~sentenced~~ ~~to~~ ~~incarceration~~ ~~in~~ a ~~state~~ ~~or~~ ~~local~~ ~~correctional~~ ~~facility~~ ~~but~~ ~~who~~ ~~may~~ ~~require~~ ~~less~~ ~~than~~ ~~confinement.~~ ~~The~~ ~~Director~~ ~~is~~ ~~authorized~~ ~~to~~ ~~provide~~ a ~~county~~ ~~or~~ ~~city~~ ~~or~~ ~~combination~~ ~~thereof~~ ~~with~~ ~~funds~~ ~~to~~ ~~operate,~~ ~~purchase~~ ~~or~~ ~~contract~~ ~~for~~ ~~such~~ ~~programs~~ ~~and~~ ~~services.~~ ~~The~~ ~~Director~~ ~~is~~ ~~further~~ ~~authorized~~ ~~to~~ ~~operate~~ ~~or~~ ~~to~~ ~~purchase~~ ~~or~~ ~~contract~~ ~~for~~ ~~such~~ ~~programs~~ ~~and~~ ~~services~~ ~~for~~ ~~a~~ ~~county~~ ~~or~~ ~~city~~ ~~or~~ ~~combination~~ ~~thereof.~~ *To facilitate local involvement and flexibility in responding to the problem of crime in its 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 ~~and~~ *agencies or* private, nonprofit agencies pursuant to appropriate contracts. ~~Such~~ ~~funding~~ ~~shall~~ ~~be~~ ~~used~~ ~~for~~ ~~the~~ ~~development~~ ~~or~~ ~~improvement~~ ~~of~~ ~~community-based~~ ~~services~~ ~~for~~ ~~offenders~~ ~~who~~ ~~may~~ ~~be~~ ~~diverted~~ ~~from~~ ~~state~~ ~~and~~ ~~local~~ ~~correctional~~ ~~facilities,~~ ~~but~~ ~~shall~~ ~~not~~ ~~be~~ ~~used~~ ~~for~~ ~~capital~~ ~~expenditures.~~

~~It~~ ~~is~~ ~~the~~ ~~intention~~ ~~of~~ ~~this~~ ~~article~~ ~~that~~ ~~the~~ ~~use~~ ~~of~~ ~~supervised~~ ~~probation~~ ~~for~~ ~~offenders~~ ~~not~~ ~~be~~ ~~decreased~~ ~~by~~ ~~the~~ ~~use~~ ~~of~~ ~~the~~ ~~sentencing~~ ~~alternatives~~ ~~authorized~~ ~~herein.~~ ~~Contracts~~ ~~entered~~ ~~into~~ ~~under~~ ~~provisions~~ ~~of~~ ~~this~~ ~~chapter~~ ~~shall~~ ~~not~~ ~~be~~ ~~utilized~~ ~~in~~ ~~lieu~~ ~~of~~ ~~supervised~~ ~~probation.~~

§ 53.1-182. Board to prescribe standards; biennial plan.

The Board shall ~~prescribe~~ *approve* standards *as prescribed by the Department of Criminal Justice Services* for the development, *implementation,* operation and evaluation of programs ~~and~~ , services *and facilities* authorized by this article. *Any city, county or combination thereof which establishes programs and provides services pursuant to this article shall submit a biennial plan to the Department of Criminal Justice Services for review and approval.*

§ 53.1-182.1. Mandated services; optional programs.

Any city, county or combination thereof which elects or is required to establish a community corrections program pursuant to this article shall provide to the judicial system the following programs and services: community service; public inebriate diversion; home incarceration; electronic monitoring; probation supervision; and substance abuse assessment, testing and treatment. Additional programs, facilities and services, including, but not limited to, jail farms, pre-release facilities and work release facilities, may be established by the city, county or combination thereof.

§ 53.1-183. Community criminal justice boards.

~~A.~~ Each county or city or combination thereof developing and establishing a ~~diversion~~ *community corrections* program pursuant to the provisions of this article shall establish a community ~~corrections resources~~ *criminal justice* board. Each county and city participating in a community ~~diversion~~ *corrections* program shall be represented on a community ~~corrections resources~~ *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. ~~Any court serving the jurisdictions participating on the board may appoint to the board an equal number of persons from each such jurisdiction, but in no event shall the judicial appointments from each jurisdiction exceed the number of appointments made by the governing body of such jurisdiction. The board shall also include one person appointed by the regional administrator of the Department serving the jurisdiction or jurisdictions participating on the board.~~ *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, the general district court, and the juvenile and domestic relations district court of each participating city or county; the chief of police of each participating city or county or the sheriff in a county not served by a police department; the attorney for the Commonwealth of each participating city or county; 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; and the regional jail administrator or the sheriff in those cities or counties not served by a regional jail.*

~~B. Volunteer members of community corrections resources boards shall be reimbursed for their travel expenses to attend board meetings. Such reimbursement shall be paid out of operating funds specified in § 53.1-181. "Volunteer members" as used in this section shall mean board members (i) who are not full-time employees of the Commonwealth or any of its political subdivisions or (ii) who are not compensated by any other employer for their attendance at board meetings.~~

~~C. Notwithstanding the requirements for the establishment of a community corrections resources board, the Director, after consultation with the governing body of each affected jurisdiction, is authorized to establish residential and nonresidential community diversion programs and services in any county or city or combination thereof and, further, in his discretion, may establish a board to advise him in the administration of such programs and services for a county or city or combination thereof. However, the Director is not authorized by this paragraph to establish any program in addition to or in lieu of a program in the affected jurisdictions which was authorized prior to July 1, 1983.~~

§ 53.1-184. Withdrawal from program.

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

§ 53.1-184.2. Authority of the community criminal justice board.

The *community criminal justice board may contract with the Director,* sheriff or administrator of a ~~local or~~ regional jail ~~may contract with local community diversion incentive programs~~ to place in such programs *or facilities~~, with the approval of the sentencing court, appropriate~~* persons convicted of a *nonviolent* felony ~~but~~ *as defined in § 19.2-316.1 and who are* confined in ~~jail pursuant to § 53.1-20~~ *a state or local correctional facility*.

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

It shall be the responsibility of community ~~corrections resources~~ *criminal justice* boards to:

1. Provide for the purchase ~~or~~, development *and operation* of community *programs*, services, and ~~programs~~ *facilities* for use by the courts in diverting offenders from ~~state and~~ 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 ~~and~~ , services *and facilities* to determine their impact on offenders;

4. ~~Provide a mechanism whereby all offenders with needs for services will be linked to appropriate services which may include placement in a substance abuse treatment program which may utilize, among other treatment methods, an acupuncture treatment modality;~~

~~5. Attempt to resolve agency policies and procedures that make it difficult for offenders to receive services;~~

~~6. Upon referral to the board of individual offenders by any court, determine whether an appropriate, rational behavioral contract can be developed with the offenders for participation in a community diversion program;~~

~~7. Where a presentence investigation report is developed in accordance with § 19.2-299 for an offender referred by any court, receive a copy of such report for the purpose of determining the suitability of such offender for participation in a community diversion program; and~~

~~8. Provide the judge of the referring court with the findings and recommendations of the board made on individual offenders pursuant to subdivision 6 hereof.~~

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

§ 53.1-185.1. Eligibility to participate.

Any community ~~diversion~~ *corrections* program established pursuant to this article shall be available as a sentencing alternative for persons sentenced to incarceration in ~~either~~ a local ~~or state~~ correctional facility *or who otherwise would be sentenced to incarceration in a local correctional facility*.

§ 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 determines that a program is not in substantial compliance with the submitted plan or standards, the Department 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, 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 program.

§ 53.1-187. Credit for time spent in confinement while awaiting trial.

Any person who is sentenced to a term of confinement in a correctional facility shall have deducted from any such term all time actually spent by the person in a state hospital for examination purposes or treatment prior to trial, in a state or local correctional facility awaiting trial or pending an appeal, or in a juvenile detention facility awaiting trial for an offense for which, upon conviction, such juvenile is sentenced to an adult correctional facility. When entering the final order in any such case, the court shall provide that the person so convicted be given credit for the time so spent.

In no case shall a person be allowed credit for time not actually spent in confinement or in detention. In no case is a person on bail to be regarded as in confinement for the purposes of this statute. No such credit shall be given to any person who escapes from a state or local correctional facility or is absent without leave from a juvenile detention facility.

Any person sentenced to confinement in a state correctional facility, in whose case the final order entered by the court in which he was convicted fails to provide for the credit authorized by this section, shall nevertheless receive credit for the time so spent in a state correctional facility. Such allowance of credit shall be in addition to the good conduct allowance provided for in Articles 2 (§ 53.1-192 et seq.) and 3 (§ 53.1-198 et seq.) of this chapter *or the earned sentence credits provided for in Article 4 (§ 53.1-202.2 et seq.) of this chapter*.

§ 53.1-189. Forfeiture and restoration of good conduct allowance and earned sentence credits.

A. Except for credits allowed under § 53.1-191, all or any part of a person's accrued good conduct allowance *and earned sentence credits* earned after admission to a state correctional facility on any sentence or combination of sentences being served may be forfeited in accordance with rules and regulations of the Board for violation of any written prison rules or regulations.

B. If a prisoner is convicted of escape or attempted escape from any correctional facility, such person shall, upon being returned to custody, forfeit all accrued good conduct allowance *and all earned sentence credits* on any sentence or combination of sentences being served, except for credits allowed under § 53.1-191.

C. No good conduct allowance *or earned sentence credit* which has been forfeited shall be restored except by the Director, whose authority shall not be delegated.

§ 53.1-191. Credits allowed in cases of injuries to or extraordinary services performed by prisoners; nonforfeiture of credits hereunder.

The Board, with the consent of the Governor, may allow to any prisoner confined in a state correctional facility a credit toward his term of confinement if he (i) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner; (ii) gives a blood donation to another prisoner; (iii) voluntarily or at the instance of a prison official renders other extraordinary services; or (iv) suffers bodily injury while in the prison system. The Board shall determine the amount of any such credit for each such service or injury. In unusual circumstances a prisoner may receive credit for donating blood, under regulations prescribed by the Board, to blood banks licensed by or subject to regulations of the State Board of Health.

Except as provided hereafter, any credit allowed under the provisions of this section shall be applied as provided in § 53.1-199. A prisoner who has been sentenced to a term of life imprisonment or to two or more life sentences shall be eligible for credits allowed under the provisions of this section. One-half of such credit shall be applied to reduce the period of time such prisoner shall serve before being eligible for parole.

Credits allowed under the provisions of this section may not be forfeited under § 53.1-189. *Credits shall not be allowed under the provisions of this section to apply toward a term of confinement imposed upon a conviction of a felony offense committed on or after January 1, 1995.*

§ 53.1-197.1. Limitation upon applicability of this article.

The provisions of this article shall not apply to any sentence imposed upon a conviction of a felony offense committed on or after January 1, 1995.

§ 53.1-202.1. Limitation upon applicability of this article.

The provisions of this article shall not apply to any sentence imposed upon a conviction of a felony offense committed on or after January 1, 1995.

Article 4.

Earned Sentence Credits for Persons

Committed Upon Felony Offenses Committed On or After January 1, 1995.

§ 53.1-202.2. Eligibility for earned sentence credits.

Every person who is convicted of a felony offense committed on or after January 1, 1995, and who is sentenced to serve a term of incarceration in a state or local correctional facility shall be eligible to earn sentence credits in the manner prescribed by this article. Such eligibility shall commence upon the person's incarceration in any correctional facility following entry of a final order of conviction by the committing court. As used in this chapter, "sentence credit" and "earned sentence credit" mean deductions from a person's term of confinement earned through adherence to rules prescribed pursuant to § 53.1-25, through program participation as required by §§ 53.1-32.1 and 53.1-202.3, and by meeting such other requirements as may be established by law or regulation. One earned sentence credit shall equal a deduction of one day from a person's term of incarceration.

§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.

A maximum of four and one-half sentence credits may be earned for each thirty days served. The earning of sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs to which a person is assigned pursuant to § 53.1-32.1. Notwithstanding any other provision of law, no portion of any sentence credits earned shall be applied to reduce the period of time a person must serve before becoming eligible for parole upon any sentence.

§ 53.1-202.4. Board of Corrections to establish certain rules, criteria, etc.

The Board shall:

1. Establish the criteria upon which a person shall be deemed to have earned sentence credits;

2. Establish the bases upon which earned sentence credits may be forfeited;

3. Establish the number of earned sentence credits which will be forfeited for violations of various (i) institutional rules, (ii) program participation requirements or (iii) other requirements for the retention of sentence credits; and

4. Establish such additional requirements for the earning of sentence credits as may be deemed advisable and as are consistent with the purposes of this article.

2. That § 53.1-184.1 of the Code of Virginia is repealed.

3. That an emergency exists and the provisions of this act shall become effective upon passage; except that the provisions of §§ 19.2-152.2 through 19.2-152.7, 19.2-299, 19.2-303.3, 19.2-316.2, 19.2-316.3, 53.1-67.2 through 53.1-67.6, 53.1-67.7, 53.1-67.8, 53.1-150 and 53.1-180 through 53.1-185.3, as amended and reenacted or added by this act, shall become effective July 1, 1995, and the Department of Criminal Justice Services and the Department of Corrections may proceed with the development of such standards for the development, implementation, operation and evaluation of these sections as may be necessary.

4. That the provisions of this act amending the Code of Virginia by adding § 19.2-305.3 shall become effective on July 1, 1996.

5. That the Supreme Court, with assistance from the Department of Criminal Justice Services, shall develop a schedule of day fines pursuant to § 19.2-305.3 to be available to the courts in accordance with current statutory penalties. The schedule shall include, but not be limited to, determination of a person's eligibility for day fines, administrative procedures for establishing the amount of punishment to be imposed in units which can be translated into dollar amounts, administrative procedures for determining the offender's ability to pay, development of standardized forms, and the development and implementation of an information management system for the program. Additionally, the Department shall review the program annually and recommend appropriate adjustments as are necessary.

6. That it is not the intent of this act to mandate local funding of any programs created under this act.

7. That all initial appointments to the Virginia Criminal Sentencing Commission shall be made at the earliest possible time so that the Commission may begin its work immediately after the effective date of this chapter.

8. That the Secretary of Public Safety, in consultation with the Joint Legislative Audit and Review Commission, shall prepare a plan to implement the provisions of §§ 19.2-152.2 through 19.2-152.7, 19.2-299, 19.2-303.3, 19.2-305.3, 19.2-316.2, 19.2-316.3, 53.1-67.2 through 53.1-67.6, 53.1-67.7, 53.1-67.8, 53.1-150 and 53.1-180 through 53.1-185.3, as amended and reenacted or added by this act. The plan shall detail the feasibility and appropriateness of the programs, facilities, services and costs necessary to divert in a manner consistent with public safety, as much as fifty percent of minimum security nonviolent offenders from state and local correctional facilities by fiscal year 2005. In addition, the plan shall detail the feasibility and appropriateness of programs, services, and costs necessary to reduce the unsentenced pretrial population of minimum security nonviolent offenders in local jails by as much as fifty percent by fiscal year 2005. "Minimum security nonviolent offenders" shall mean offenders who (i) have received a sentence of three years of less, (ii) have been incarcerated for a nonviolent offense, (iii) have no prior violent offense convictions, and (iv) have passed a review under a Department of Corrections risk assessment procedure which shall include factors used by corrections professionals to determine whether an offender poses a risk of flight or harm to the public or other inmates. The plan shall be submitted to the Governor, the Chairmen of the Senate Finance and House Appropriations Committees, and the Clerks of the House of Delegates and the Senate for distribution to the members of the General Assembly no later than January 11, 1995.

9. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is ~~$25,675,440~~ $21,378,220.

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