

002333216

## HOUSE BILL NO. 1328

Offered January 24, 2000

*A BILL to amend and reenact §§ 16.1-273, 18.2-251.01 and 19.2-123 of the Code of Virginia, relating to drug screenings of certain offenders.*

Patrons—Almand and Dudley

Referred to Committee for Courts of Justice

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

**1. That §§ 16.1-273, 18.2-251.01 and 19.2-123 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-273. Court may require investigation of social history and preparation of victim impact statement.

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which (i) shall include a drug screening and (ii) may include the physical, mental and social conditions, including an assessment of any affiliation with a youth gang as defined in § 16.1-299.2, and personality of the child and the facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000, which would be a felony if committed by an adult, or a violation under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2 misdemeanor if committed by an adult, the court shall order the juvenile to undergo a drug screening. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse counselor as defined in § 54.1-3500 *or by an individual specifically trained to conduct such assessments under the supervision of such counselor*, employed by the Department of Juvenile Justice or by a locally operated court services unit or by an agency ~~employee under the direct supervision of such a counselor~~ *under contract to the Department of Juvenile Justice or locally operated court services unit with staff specifically trained to conduct such assessments.*

B. The court also shall, on motion of the attorney for the Commonwealth with the consent of the victim, or may in its discretion, require the preparation of a victim impact statement in accordance with the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant physical, psychological or economic injury as a result of the violation of law.

§ 18.2-251.01. Substance abuse screening and assessment for felony convictions.

A. When a person is convicted of a felony, not a capital offense, committed on or after January 1, 2000, he shall be required to undergo a substance abuse screening and, if the screening indicates a substance abuse or dependence problem, an assessment by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Corrections or by an agency employee under the ~~direct~~ supervision of such counselor. If the person is determined to have a substance abuse problem, the court shall require him to enter a treatment and/or education program, if available, which, in the opinion of the court, is best suited to the needs of the person. This program may be located in the judicial district in which the conviction was had or in any other judicial district as the court may provide. The treatment and/or education program shall be ~~certified or~~ licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or shall be a similar program which is made available through the Department of Corrections. ~~The court shall~~ *program may* require the person entering such program under the provisions of this section to pay ~~all or part of the costs of the program or treatment, excluding the costs of the screening and assessment, based upon the person's a fee for the education and treatment component, or both, based upon the defendant's ability to pay.~~

B. As a condition of any suspended sentence and probation, the court shall order the person to undergo periodic testing and treatment for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment.

§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release.

A. Any judicial officer may impose any one or any combination of the following conditions of release:

1. Place the person in the custody and supervision of a designated person, organization or pretrial services agency which, for the purposes of this section, shall not include a court services unit established

INTRODUCED

HB1328

60 pursuant to § 16.1-233;

61 2. Place restrictions on the travel, association or place of abode of the person during the period of  
62 release and restrict contacts with household members for a period not to exceed seventy-two hours;

63 2a. Require the execution of an unsecured bond;

64 3. Require the execution of a secure bond which at the option of the accused shall be satisfied with  
65 sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in  
66 real estate or personal property owned by the proposed surety shall be considered in determining  
67 solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or  
68 personal property equals or exceeds the amount of the bond;

69 3a. Require that the person do any or all of the following: (i) maintain employment or, if  
70 unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid  
71 all contact with an alleged victim of the crime and with any potential witness who may testify  
72 concerning the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm,  
73 destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any  
74 illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to  
75 testing for drugs and alcohol until the final disposition of his case; or

76 4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to  
77 assure his good behavior pending trial, including a condition requiring that the person return to custody  
78 after specified hours or be placed on home electronic incarceration pursuant to § 53.1-131.2.

79 Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

80 In addition, where the accused is a resident of a state training center for the mentally retarded, the  
81 judicial officer may place the person in the custody of the director of the state facility, if the director  
82 agrees to accept custody. Such director is hereby authorized to take custody of such person and to  
83 maintain him at the training center prior to a trial or hearing under such circumstances as will  
84 reasonably assure the appearance of the accused for the trial or hearing.

85 B. In any jurisdiction served by a pretrial services agency which offers a drug *or alcohol screening*  
86 *or testing* program approved for the purposes of this subsection by the chief general district court judge,  
87 any such person charged with a crime may be requested by such agency to give voluntarily a urine  
88 sample, *submit to a drug or alcohol screening, or take a breath test for presence of alcohol.* ~~This~~  
89 sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such  
90 other drugs as the agency may deem appropriate prior to any hearing to establish bail. The judicial  
91 officer and agency shall inform the accused or juvenile being *screened or tested* that test results shall be  
92 used by a judicial officer only at a bail hearing and only to determine appropriate conditions of release  
93 or to reconsider the conditions of bail at a subsequent hearing. All *screening or test results, and any*  
94 *pretrial investigation report containing the screening or test results,* shall be confidential with access  
95 thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel, *other pretrial*  
96 *service agencies, any criminal justice agency as defined in § 9-169* and, in cases where a juvenile is  
97 *screened or tested,* the parents or legal guardian or custodian of such juvenile. However, in no event  
98 shall the judicial officer have access to any *screening or test result* prior to making a bail release  
99 determination or to determining the amount of bond, if any. Following this determination, the judicial  
100 officer shall consider the *screening or test results* and the *screening or testing* agency's report and  
101 accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall a  
102 decision regarding a release determination be subject to reversal on the sole basis of such *screening or*  
103 *test results.* Any accused or juvenile whose urine sample has tested positive for such drugs and who is  
104 admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs  
105 and may be required to be tested on a periodic basis until final disposition of his case to ensure his  
106 compliance with the order. Sanctions for a violation of any condition of release, which violations shall  
107 include subsequent positive drug *or alcohol* test results or failure to report as ordered for testing, may be  
108 imposed in the discretion of the judicial officer and may include imposition of more stringent conditions  
109 of release, contempt of court proceedings or revocation of release. Any test given under the provisions  
110 of this subsection which yields a positive drug *or alcohol* test result shall be reconfirmed by a second  
111 test if the person tested denies or contests the initial drug *or alcohol* test positive result. The results of  
112 any drug *or alcohol* test conducted pursuant to this subsection shall not be admissible in any judicial  
113 proceeding other than for the imposition of sanctions for a violation of a condition of release.

114 C. [Repealed.]

115 D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody  
116 from releasing that juvenile pursuant to § 16.1-247. If any condition of release imposed under the  
117 provisions of this section is violated, a judicial officer may issue a *capias* or order to show cause why  
118 the recognizance should not be revoked.