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## HOUSE BILL NO. 386

House Amendments in [ ] — February 11, 2000

A *BILL to amend and reenact §§ 18.2-270, 18.2-271.1, 19.2-299.2, 46.2-341.28 and 46.2-391 of the Code of Virginia [ and to amend the Code of Virginia by adding a section numbered 18.2-271.01 ] , relating to penalty for driving while intoxicated; subsequent offense; prior conviction.*

Patrons—McDonnell, Albo, Jones, S.C. and Kilgore; Senators: Schrock and Stolle

Referred to Committee for Courts of Justice

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

**1. That §§ 18.2-270, 18.2-271.1, 19.2-299.2, 46.2-341.28 and 46.2-391 of the Code of Virginia are amended and reenacted [ and that the Code of Virginia is amended by adding a section numbered 18.2-271.01 ] as follows:**

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. ~~Forty-eight hours~~ Five days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense committed within a period of five to ten years of a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third or subsequent offense committed within ten years of an offense under § 18.2-266 shall be guilty of a Class 6 felony, *and the sentence shall include a mandatory, minimum sentence of confinement for ten days that shall not be subject to suspension by the court. Any person convicted of a third offense committed within five years of an offense under § 18.2-266 shall be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for thirty days that shall not be subject to suspension by the court.* Upon conviction for a fourth or subsequent offense within ten years, the sentence shall include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part. Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed three years.

In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person seventeen years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1,000 and (ii) sentenced to perform forty hours of community service in a program benefiting children or, for a subsequent offense, eighty hours of community service in such a program.

For the purpose of this section, a conviction or finding of guilty in the case of a juvenile under the following shall be considered a prior conviction: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of § 18.2-51.4, § 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, and §§ 18.2-266 through 18.2-269, or (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

~~[ § 18.2-271.01. Revocation of vehicle registration and license plates for second or subsequent conviction of driving while intoxicated.~~

*A. Upon receiving a record of the conviction of any person who is adjudged to be a second or subsequent offender in violation of the provisions of subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or § 18.2-272, or a violation of a federal law or a law of any other state or a valid ordinance of any county, city, or town similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266, or § 18.2-272, if the second or subsequent violation occurred within five years from the prior violations, the Commissioner of the Department of Motor Vehicles shall forthwith suspend all of the registration certificates and license plates issued for any motor vehicles registered in the name of such person, and shall not thereafter reissue such certificates or license plates or issue any new registration certificates or license plates for any other vehicle that such person seeks to register, until such time as such person's privilege to drive a motor vehicle in Virginia has been restored in full, or on a restricted basis, or until a hardship exemption has been granted by a local Virginia Alcohol Safety Action Program*

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60 *(VASAP) program in accordance with subsection B of this section.*

61 *B. Any person or persons, other than the repeat offender, who would suffer undue hardship from the*  
62 *suspension of vehicle registration certificates and license plates provided for in subsection A of this*  
63 *section may apply for an exception therefrom by submitting an application therefor to a local VASAP in*  
64 *the area where such person resides. Such application shall set forth the hardship that will be imposed*  
65 *by the suspension, the relationship of the person filing the application to the repeat offender, the vehicle*  
66 *for which the exemption is sought, and any other information requested by the local VASAP. The local*  
67 *VASAP shall have authority to grant a hardship exemption and notify the Commissioner of the*  
68 *Department of Motor Vehicles that an exemption has been granted, in accordance with the guidelines*  
69 *established pursuant to subsection C of this section.*

70 *C. The Commission on VASAP shall establish guidelines for the granting of limited hardship*  
71 *exemptions from the registration suspension requirement provided in subsection A on an individual*  
72 *basis, to avoid undue hardship to an individual, other than the repeat offender, including a family*  
73 *member of the repeat intoxicated driver or a co-owner of the motor vehicle. ]*

74 § 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person  
75 convicted under law of another state.

76 A. Any person convicted of a first or second offense of § 18.2-266 (i), (ii), (iii) or (iv), or any  
77 ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of  
78 § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into  
79 and successfully complete an alcohol safety action program in the judicial district in which such charge  
80 is brought or in any other judicial district upon such terms and conditions as the court may set forth.  
81 However, upon motion of a person convicted of any such offense following an assessment of the person  
82 conducted by an alcohol safety action program, the court, for good cause, may decline to order  
83 participation in such a program *if the assessment by the alcohol safety action program indicates that*  
84 *treatment is not appropriate for such person.* In no event shall such persons be permitted to enter any  
85 such program which is not certified as meeting minimum standards and criteria established by the  
86 Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this  
87 section and to § 18.2-271.2.

88 B. The court shall require the person entering such program under the provisions of this section to  
89 pay a fee of no less than \$250 but no more than \$300. A reasonable portion of such fee, as may be  
90 determined by the Commission on VASAP, but not to exceed ten percent, shall be forwarded monthly to  
91 be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance  
92 shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon  
93 a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to  
94 the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention  
95 under any such program may be charged.

96 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to  
97 the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized  
98 by § 18.2-270 or § 46.2-341.28 and the license revocation as authorized by § 18.2-271. Upon a finding  
99 that a person so convicted is required to participate in the program described herein, the court shall enter  
100 the conviction on the warrant, and shall note that the person so convicted has been referred to such  
101 program. The court may then proceed to issue an order in accordance with subsection E of this section,  
102 if the court finds that the person so convicted is eligible for a restricted license. If the court finds good  
103 cause for a person not to participate in such program or subsequently that such person has violated,  
104 without good cause, any of the conditions set forth by the court in entering the program, the court shall  
105 dispose of the case as if no program had been entered, in which event the revocation provisions of  
106 § 46.2-389 and subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon  
107 final disposition of the case, send a copy of its order to the Commissioner of the Department of Motor  
108 Vehicles. If such order provides for the issuance of a restricted license, the Commissioner of the  
109 Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any  
110 such disposition shall be allowed as provided by law. The time within which an appeal may be taken  
111 shall be calculated from the date of the final disposition of the case or any motion for rehearing,  
112 whichever is later.

113 D. Any person who has been convicted in another state of the violation of a law of such state  
114 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose  
115 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions  
116 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or  
117 city in which he resides that he be given probation and assigned to a program as provided in subsection  
118 A of this section and that, upon entry into such program, he be issued an order in accordance with  
119 subsection E of this section. If the court finds that such person would have qualified therefor if he had  
120 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the  
121 court may grant the petition and may issue an order in accordance with subsection E of this section as

to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by the court, the court shall dispose of the case as if no program had been entered and shall notify the Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner of the Department of Motor Vehicles.

No period of license suspension or revocation shall be imposed pursuant to this subsection which, when considered together with any period of license suspension or revocation previously imposed for the same offense in any state, results in such person's license being suspended for a period in excess of the maximum periods specified in this subsection.

E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any or all of the following purposes: (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation program entered pursuant to this subsection; (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; (v) such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed health professional; or (vi) travel necessary to transport a minor child under the care of such person to and from school, day care, and facilities housing medical service providers. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to the person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, if the order provides for a restricted license for that time period. A copy of such order and, after receipt thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon enrollment within fifteen days in, and successful completion of, a program as described in subsection A of this section. No restricted license shall be issued during the first four months of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within ten years of a first such offense. *No restricted license shall be issued during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within five years of a first such offense.* No restricted license shall be issued during any revocation period imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person whose privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a county, city or town, or of any federal law or the laws of any other state similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411, forty dollars shall be transferred to the Commission on VASAP, and twenty-five dollars shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

F. The court shall have jurisdiction over any person entering such program under any provision of this section until such time as the case has been disposed of by either successful completion of the program, or revocation due to ineligibility or violation of a condition or conditions imposed by the court, whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall be made by first-class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than ten days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent forthwith to the Commissioner of the Department of Motor Vehicles.

183 G. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any  
184 gifts or bequests of money or property, and any grant, loan, service, payment or property from any  
185 source, including the federal government, for the purpose of driver alcohol education. Any such gifts,  
186 bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

187 H. The Commission on VASAP, or any county, city, town, or any combination thereof may establish  
188 and, if established, shall operate, in accordance with the standards and criteria required by this  
189 subsection, alcohol safety action programs in connection with highway safety. Each such program shall  
190 operate under the direction of a local independent policy board chosen in accordance with procedures  
191 approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges  
192 who regularly hear or heard cases involving driving under the influence and are familiar with their local  
193 alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish  
194 minimum standards and criteria for the implementation and operation of such programs and shall  
195 establish procedures to certify all such programs to ensure that they meet the minimum standards and  
196 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration  
197 of such programs for public information activities, for accounting procedures, for the auditing  
198 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth  
199 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state  
200 programs and local programs run in conjunction with any county, city or town and costs incurred by the  
201 Commission. The Commission shall submit an annual report as to actions taken at the close of each  
202 calendar year to the Governor and the General Assembly.

203 I. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall  
204 permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a  
205 commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License  
206 Act (§ 46.2-341.1 et seq.).

207 § 19.2-299.2. Alcohol and substance abuse screening and assessment for designated Class 1  
208 misdemeanor convictions.

209 A. When a person is convicted of any offense committed on or after January 1, 2000, under Article  
210 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  
211 is punishable as a Class 1 misdemeanor, the court shall order the person to undergo a substance abuse  
212 screening as part of the sentence if the defendant's sentence includes probation supervision by a  
213 community corrections program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of  
214 Title 53.1 or participation in a local alcohol safety action program. *Whenever a court requires a person*  
215 *to enter into and successfully complete an alcohol safety action program pursuant to § 18.2-271.1 for a*  
216 *second offense of the type described therein, or orders an evaluation of a person to be conducted by an*  
217 *alcohol safety action program pursuant to any provision of § 46.2-391, the alcohol safety action*  
218 *program shall assess such person's degree of alcohol abuse before determining the appropriate level of*  
219 *treatment to be provided or to be recommended for such person being evaluated pursuant to § 46.2-391.*

220 The court may order such screening upon conviction as part of the sentence of any other Class 1  
221 misdemeanor if the defendant's sentence includes probation supervision by a community corrections  
222 program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1, participation in  
223 a local alcohol safety action program or any other sanction and the court has reason to believe the  
224 defendant has a substance abuse or dependence problem.

225 B. A substance abuse screening ordered pursuant to this section shall be conducted by the local  
226 alcohol safety action program. When an offender is ordered to enter programming under the community  
227 corrections program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1,  
228 rather than the local alcohol safety action program, the local community corrections program shall be  
229 responsible for the screening. However, if a community corrections program has not been established for  
230 the locality, the local alcohol safety action program shall conduct the screening as part of the sentence.

231 C. If the screening indicates that the person has a substance abuse or dependence problem, an  
232 assessment shall be completed and if the assessment confirms that the person has a substance abuse or  
233 dependence problem, as a condition of a suspended sentence and probation, the court shall order the  
234 person to complete the substance abuse education and intervention component, or both as appropriate, of  
235 the local alcohol safety action program or such other treatment program, if available, such as in the  
236 opinion of the court would be best suited to the needs of the person. If the referral is to the local  
237 alcohol safety action program, the program may charge a fee for the education and intervention  
238 component, or both, not to exceed \$300, based upon the defendant's ability to pay.

239 § 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense;  
240 prior conviction.

241 Any person violating any provision of subsection A of § 46.2-341.24 shall be guilty of a Class 1  
242 misdemeanor.

243 Any person convicted of a second offense committed within less than five years after a first offense  
244 under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$200 nor more than

\$2,500 and by confinement in jail for not less than one month nor more than one year. ~~Forty-eight hours~~ Five days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense committed within a period of five to ten years of a first offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense committed within ten years of an offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$500 nor more than \$2,500 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to ten years of a first offense.

For the purposes of this section a conviction or finding of not innocent in the case of a juvenile under (i) § 18.2-51.4 or § 18.2-266, (ii) the ordinance of any county, city or town in this Commonwealth substantially similar to the provisions of § 18.2-51.4 or § 18.2-266, (iii) subsection A of § 46.2-341.24, or (iv) the laws of any other state substantially similar to the provisions of §§ 18.2-51.4, 18.2-266 or subsection A of § 46.2-341.24, shall be considered a prior conviction.

§ 46.2-391. Revocation of license for conviction of driving while under influence of drugs or intoxicants; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), § 18.2-51.4 (maiming committed while driving under the influence of drugs or intoxicants), § 18.2-266 (driving under the influence of drugs or intoxicants), § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266), or a violation of a federal law or a law of any other state or a valid ordinance of any county, city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or § 18.2-272, if the second violation adjudication occurred within ten years from the prior violation. However, if the Commissioner has received a copy of a court order as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court.

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person adjudged to be a third offender within a period of ten years in violation of the provisions of subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266, or a violation of federal law or a law of any other state or a valid ordinance of any county, city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or § 18.2-272.

C. Any person who has had his driver's license revoked in accordance with subsection B of this section may petition the circuit court of his residence:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of his last conviction. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all vehicles owned by or registered to him or her, in whole or in part, for a period of at least six months, and upon whatever other conditions the court may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person, *to include an assessment of his degree of alcohol abuse and the appropriate treatment thereof, if any,* be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

2. For a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment after the expiration of three years from the date of his last conviction. The court may order

that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court ~~may~~ *shall* prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person, *to include an assessment of his degree of alcohol abuse and the appropriate treatment thereof, if any,* be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

~~In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this subsection, such person shall be given credit for any period his driver's license was revoked under § 46.2-360 after adjudication as an habitual offender.~~

D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted license issued pursuant to subsection C shall, *provided such revocation was based on at least one conviction for an offense committed after July 1, 1999,* be punished as follows:

1. If such driving does not, of itself, endanger the life, limb, or property of another, such person shall be guilty of a misdemeanor punishable by confinement in jail for no more than ninety days or a fine of not more than \$2,500, or both. However, ten days of any such confinement shall not be suspended except in cases designated in subdivision 2 (ii) of this subsection.

2. If such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers the life, limb or property of another and one of the offender's underlying convictions is for §§ 18.2-36.1, 18.2-51.4, 18.2-266 or a parallel local ordinance, such person shall be guilty of a felony punishable by confinement in a state correctional facility for 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, by confinement in jail for twelve months and no portion of such sentence shall be suspended. However, (i) if the sentence is more than one year in a state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, said sentence, or any part thereof may be suspended.

3. If any such offense of driving is a second or subsequent violation, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

*F. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted license issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be guilty of a violation of § 18.2-272.*

**2. 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 \$0 in FY 2010.**

**3. That the provisions of this act shall be effective October 1, 2000.**