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SENATE BILL NO. 155

Offered January 12, 2000

A BILL to amend and reenact §§ 18.2-10, 18.2-251, 18.2-252, 18.2-254 and 19.2-295.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-278.8:01 and 16.1-280.1, relating to juveniles found delinquent of first drug offense; commitment of juvenile for treatment of habitual alcohol or drug abuse; persons charged with first offense placed on probation; post-release supervision of felons.

Patron—Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-10, 18.2-251, 18.2-252, 18.2-254 and 19.2-295.2 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 16.1-278.8:01 and 16.1-280.1 as follows:

§ 16.1-278.8:01. Juveniles found delinquent of first drug offense; screening; assessment; drug tests; costs and fees; education or treatment programs.

Whenever any juvenile who has not previously been found delinquent of any offense under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant or hallucinogenic drugs, or has not previously had a proceeding against him for a violation of such an offense dismissed as provided in § 18.2-251, is found delinquent of any offense concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances, the juvenile court or the circuit court shall require such juvenile to undergo a substance abuse screening pursuant to § 16.1-273 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by a court services unit of the Department of Juvenile Justice or by personnel of any treatment program approved by the Department. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of such criminal proceedings. The court shall also order the juvenile to undergo such treatment or education program for substance abuse, if available, as the court deems appropriate based upon consideration of a substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or by a similar program available through a facility or program operated by the Department of Juvenile Justice.

§ 16.1-280.1. Commitment of juvenile for treatment of habitual alcohol or drug abuse.

Whenever any court has found a juvenile to be delinquent pursuant to the provisions of this law and, based on the substance abuse screening and assessment pursuant to § 16.1-273, reasonably believes that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and has determined the juvenile to be in need of treatment for the use of alcohol or drugs, the court may commit such juvenile to any facility, licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the treatment of juveniles for the intemperate use of alcohol, narcotics or other controlled substances. Confinement under such commitment shall be, in all regards, treated as a commitment to the Department of Juvenile Justice and the juvenile so committed may be convicted of escape if he leaves the place of commitment without authority. The committing court shall review the placement at thirty-day intervals.

§ 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.

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(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 fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed on or after January 1, 1995, the court may, *and for any felony offense committed on or after July 1, 2000, the court shall, if the substance abuse screening and assessment conducted pursuant to § 18.2-251.01 indicates the presence of a substance abuse problem,* 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.

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; screening, evaluation and education programs; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to be evaluated and enter a treatment and/or education program, if available, such as, in the opinion of the court, may be best suited to the needs of the accused. This program may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by a program certified or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, by a similar program which is made available through the Department of Corrections or by an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, evaluation, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (i) to successfully complete the treatment and/or education program ~~and~~, (ii) to remain drug *and alcohol* free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug *and alcohol* free, (iii) *to make reasonable efforts to secure and maintain employment, and (iv) to comply with a plan of at least 100 hours of community service.* Such testing ~~may~~ shall be conducted by personnel of ~~any program to which the person is referred or by the supervising probation agency or personnel of any treatment program approved by the supervising probation agency.~~

The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of §§ 18.2-259.1 and 46.2-390.1, and the driver's license forfeiture provisions of those sections shall be imposed. The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

§ 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing, and treatment or education.

The trial judge or court trying the case of any person found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances, ~~may~~ shall condition any suspended sentence by first requiring such person to agree to undergo ~~periodic medical examinations and tests to ascertain any use or dependency~~

on the substances listed above and like substances. The frequency and completeness of such examinations and tests shall be in the discretion of such judge or court, and the results of the examinations and tests given to the judge or court as ordered: a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by the supervising probation agency or by personnel of any treatment program approved by the supervising probation agency. The cost of such examinations and tests testing ordered by the court in addition to any screening and assessment ordered pursuant to ~~§ 18.2-251.01~~ shall be paid by the Commonwealth and taxed as a part of the costs of such criminal proceedings. The judge or court, in his or its discretion, may enter such additional orders as may be required to aid in the rehabilitation of such convicted person: shall order the person, as a condition of any suspended sentence, to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, by a similar program which is made available through the Department of Corrections or by an ASAP program certified by the Commission on VASAP.

§ 18.2-254. Commitment of convicted person for treatment for drug or alcohol abuse.

A. Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in § 18.2-251, is found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances, the judge or court shall require such person to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of the criminal proceedings. The judge or court shall also order the person to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or by a similar program available through a facility or program operated by the Department of Corrections if the conviction was for a felony punishable by one year or more, or, if the conviction was for a misdemeanor or a felony for which the court may impose a jail sentence, through a facility or program operated by a local or regional jail, a community corrections program established pursuant to § 53.1-180, or by an ASAP program certified by the Commission on VASAP.

B. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by, or closely related to, the use of drugs and determined by the court to be in need of treatment for the use of drugs may commit such person, upon his conviction and with his consent and the consent of the receiving institution, , to any facility for the treatment of persons for the intemperate use of narcotic or other controlled substances, licensed or supervised by the State Department of Mental Health, Mental Retardation and Substance Abuse Services Board, if space is available in such facility, , for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment, at any time, and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

B. C. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines that such defendant is an alcoholic as defined in § 37.1-1 and in need of treatment, may commit such person, upon his conviction and with his consent and the consent of the receiving institution, , to any facility for the treatment of alcoholics licensed or supervised by the State Department of Mental Health, Mental Retardation and Substance Abuse Services Board, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The

183 court may revoke such commitment, at any time, and transfer the person to an appropriate state or local
184 correctional facility. Upon presentation of a certified statement from the director of the treatment facility
185 to the effect that the confined person has successfully responded to treatment, the court may release such
186 confined person prior to the termination of the period of time for which such person was confined and
187 may suspend the remainder of the term upon such conditions as the court may prescribe.

188 § 19.2-295.2. Post-release supervision of felons.

189 A. At the time the court imposes sentence upon a conviction for any felony offense committed on or
190 after January 1, 1995, the court may, *and for any felony offense committed on or after July 1, 2000, the*
191 *court shall, if the substance abuse screening and assessment conducted pursuant to § 18.2-251.01*
192 *indicates the presence of a substance abuse problem,* in addition to any other punishment imposed if
193 such other punishment includes an active term of incarceration in a state or local correctional facility,
194 impose a term in addition to the active term of not less than six months nor more than three years, as
195 the court may determine. Such additional term shall be suspended and the defendant placed under
196 post-release supervision upon release from the active term of incarceration. The period of supervision
197 shall be established by the court; however, such period shall not be less than six months nor more than
198 three years. Periods of post-release supervision imposed pursuant to this section upon more than one
199 felony conviction may be ordered to run concurrently. Periods of post-release supervision imposed
200 pursuant to this section may be ordered to run concurrently with any period of probation the defendant
201 may also be subject to serve.

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

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

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

213 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
214 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
215 **is \$0 in FY 2010.**