

012378536

HOUSE BILL NO. 1862

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 14, 2001)

(Patron Prior to Substitute—Delegate McDonnell)

*A BILL to amend and reenact §§ 18.2-251 and 22.1-315 of the Code of Virginia, relating to suspension of teachers.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-251 and 22.1-315 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; screening, assessment 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 undergo a substance abuse assessment pursuant to § 18.2-251.01 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 based upon consideration of the substance abuse assessment. 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 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 if the court imposes a sentence of one year or more or, if the court imposes a sentence of twelve months or less, by a similar program available through a local or regional jail, a community corrections program established pursuant to § 53.1-180, or 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, assessment, 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 or education program, (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 shall be conducted by personnel of the supervising probation agency or personnel of any program or agency 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. *Notwithstanding any other provision of this section, whenever a court places a teacher or school employee on probation upon terms and conditions pursuant to this section, such action shall be treated as a finding of guilt for the purposes of subsection C of § 22.1-315.* 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.

§ 22.1-315. Grounds and procedure for suspension.

A. A teacher or other public school employee, whether full-time or part-time, permanent, or temporary, may be suspended for good and just cause when the safety or welfare of the school division or the students therein is threatened or when the teacher or school employee has been charged by

60 summons, warrant, indictment or information with the commission of a felony; a misdemeanor involving
61 (i) sexual assault as established in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, (ii) obscenity
62 and related offenses as established in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, (iii) drugs
63 as established in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (iv) moral turpitude, or (v) the
64 physical or sexual abuse or neglect of a child; or an equivalent offense in another state. Except when a
65 teacher or school employee is suspended because of being charged by summons, warrant, indictment or
66 information with the commission of one of the above-listed criminal offenses, a division superintendent
67 or appropriate central office designee shall not suspend a teacher or school employee for longer than
68 sixty days and shall not suspend a teacher or school employee for a period in excess of five days unless
69 such teacher or school employee is advised in writing of the reason for the suspension and afforded an
70 opportunity for a hearing before the school board in accordance with §§ 22.1-311 and 22.1-313, if
71 applicable. Any teacher or other school employee so suspended shall continue to receive his or her then
72 applicable salary unless and until the school board, after a hearing, determines otherwise. No teacher or
73 school employee shall be suspended solely on the basis of his or her refusal to submit to a polygraph
74 examination requested by the school board.

75 B. Any school employee suspended because of being charged by summons, warrant, information or
76 indictment with one of the offenses listed in subsection A may be suspended with or without pay. In the
77 event any school employee is suspended without pay, an amount equal to his or her salary while on
78 suspended status shall be placed in an interest-bearing demand escrow account. Upon being found not
79 guilty of one of the offenses listed in subsection A or upon the dismissal or nolle prosequi of the
80 charge, such school employee shall be reinstated with all unpaid salary and accrued interest from the
81 escrow account, less any earnings received by the school employee during the period of suspension, but
82 in no event shall such payment exceed one year's salary.

83 C. In the event any school employee is found guilty by an appropriate court of one of the offenses
84 listed in subsection A and, after all available appeals have been exhausted and such conviction is
85 upheld, all funds in the escrow account shall be repaid to the school board. *For the purposes of this*
86 *section, the placing of a school employee on probation pursuant to the terms and conditions of*
87 *§ 18.2-251 shall be treated as a finding of guilt.*

88 D. No school employee shall have his or her insurance benefits suspended or terminated because of
89 such suspension in accordance with this section.

90 E. Nothing in this section shall be construed to limit the authority of a school board to dismiss or
91 place on probation a teacher or school employee pursuant to Article 3 (§ 22.1-306 et seq.) of this
92 chapter.