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SENATE BILL NO. 789

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Militia & Police
on February 12, 2001)

(Patron Prior to Substitute—Senator Houck)

*A BILL to amend and reenact § 16.1-278.9 of the Code of Virginia, relating to loss of driving privileges for making a bomb threat.***Be it enacted by the General Assembly of Virginia:****1. That § 16.1-278.9 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm and drug offenses; truancy.

A. If a court has found facts which would justify a finding that a child at least thirteen years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city or town, (ii) a refusal to take a blood or breath test in violation of § 18.2-268.2, (iii) a felony violation of §§ 18.2-248, 18.2-248.1 or § 18.2-250, (iv) a misdemeanor violation of §§ 18.2-248, 18.2-248.1, or § 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful purchase or possession of alcohol in violation of § 4.1-305 or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309, (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city or town, or (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below, or (viii) a violation of § 18.2-83, the court shall order that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person seventeen years of age or younger, the court shall impose the additional fine and order community service as provided in § 18.2-270. If the offense involves a violation designated under clause (i), (ii) or (iii) or (viii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of seventeen, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of eighteen, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v) or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of sixteen, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following his sixteenth birthday. If the offense involves a violation designated under clause (i), (ii), (v) or (vi), the court shall impose the license sanction without entering a judgment of guilt and shall defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than thirty days, except when the offense involves possession of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding twelve shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of sixteen, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following his sixteenth birthday.

A1. If a court finds that a child at least thirteen years of age has failed to comply with school attendance and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's driving privileges for a period of not less than thirty days. If such failure to comply involves a child under the age of sixteen, the child's ability to apply for a driver's license shall be delayed for a period of not less than thirty days following his sixteenth birthday.

B. Any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 shall be ordered to surrender his driver's license, which shall be held in the physical custody of the court during any period of license denial.

C. The court shall report any order issued under this section to the Department of Motor Vehicles, which shall preserve a record thereof. The report and the record shall include a statement as to whether the child was represented by or waived counsel or whether the order was issued pursuant to subsection A1 of this section. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

60 The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a
61 driver's license until such time as is stipulated in the court order or until notification by the court of
62 withdrawal of the order of denial under subsection E.

63 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of
64 subsection A, the child may be referred to a certified alcohol safety action program in accordance with
65 § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child
66 involves a violation designated under clause (iii), (iv), (v) ~~or~~ (vii) *or* (viii) of subsection A, such child
67 may be referred to appropriate rehabilitative or educational services upon such terms and conditions as
68 the court may set forth.

69 The court, in its discretion and upon a demonstration of hardship, may authorize the use of a
70 restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the
71 offense or at the time of the court's finding as provided in subsection A1 for any of the purposes set
72 forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted license
73 shall be issued if the finding as to such child involves a violation designated under clause (iii) or (iv) of
74 subsection A, or if it involves a second or subsequent violation of any offense designated in subsection
75 A or a second finding by the court of failure to comply with school attendance and meeting
76 requirements as provided in subsection A1. The issuance of the restricted permit shall be set forth within
77 the court order, a copy of which shall be provided to the child, and shall specifically enumerate the
78 restrictions imposed and contain such information regarding the child as is reasonably necessary to
79 identify him. The child may operate a motor vehicle under the court order in accordance with its terms.
80 Any child who operates a motor vehicle in violation of any restrictions imposed pursuant to this section
81 shall be guilty of a violation of § 46.2-301.

82 E. Upon petition made at least ninety days after issuance of the order, the court may review and
83 withdraw any order of denial of a driver's license if for a first such offense or finding as provided in
84 subsection A1. For a second or subsequent such offense or finding, the order may not be reviewed and
85 withdrawn until one year after its issuance.

86 F. If the finding as to such child involves a violation designated under clause (i), (ii), (v), (vi) or
87 (vii) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the
88 child's driver's license has been restored, the court shall or, in the event the violation resulted in the
89 injury or death of any person, may discharge the child and dismiss the proceedings against him.
90 Discharge and dismissal under these provisions shall be without an adjudication of guilt but a record of
91 the proceeding shall be retained for the purpose of applying this section in subsequent proceedings.
92 Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt. If the
93 finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the
94 charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the
95 provisions of this chapter or § 18.2-251.