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## HOUSE BILL NO. 1527

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on January 24, 2003)

(Patrons Prior to Substitute—Delegates Purkey and McDonnell [HB2542])

*A BILL to amend and reenact §§ 16.1-278.8 and 16.1-278.9 of the Code of Virginia, relating to loss of driving privileges for driving under the influence or refusal to submit to blood or breath test; deferred findings.*

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

**1. That §§ 16.1-278.8 and 16.1-278.9 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-278.8. Delinquent juveniles.

A. If a juvenile is found to be delinquent, ~~except where such finding involves a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance,~~ the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278;
2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;
3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile and his parent;

4. Defer disposition for a period of time not to exceed ~~twelve~~ 12 months, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the juvenile (i) has been found delinquent for an offense which would be a Class 1 misdemeanor or felony if committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department, and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;

5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a period not to exceed ~~twelve~~ 12 months and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile where the court determines this participation to be in the best interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;

7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at ~~thirty-day~~ 30 day intervals;

8. Impose a fine not to exceed \$500 upon such juvenile;

9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile

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60 as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is  
61 suspended may be referred for an assessment and subsequent referral to appropriate services, upon such  
62 terms and conditions as the court may order. The court, in its discretion and upon a demonstration of  
63 hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who  
64 enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to  
65 and from school. The restricted permit shall be issued in accordance with the provisions of such  
66 subsection. However, only an abstract of the court order which identifies the juvenile and the conditions  
67 under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

68 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the  
69 physical custody of the court during any period of curfew restriction. The court shall send an abstract of  
70 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall  
71 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this  
72 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement  
73 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be  
74 noted all curfew restrictions, shall be provided to the juvenile and shall contain such information  
75 regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor  
76 vehicle under the court order in accordance with its terms.

77 Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this  
78 section shall be guilty of a violation of § 46.2-301.

79 The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a  
80 driver's license until such time as is stipulated in the court order or until notification by the court of  
81 withdrawal of the order imposing the curfew;

82 10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual  
83 damages or loss caused by the offense for which the juvenile was found to be delinquent;

84 11. Require the juvenile to participate in a public service project under such conditions as the court  
85 prescribes;

86 12. In case of traffic violations, impose only those penalties which are authorized to be imposed on  
87 adults for such violations. However, for those violations punishable by confinement if committed by an  
88 adult, confinement shall be imposed only as authorized by this title;

89 13. Transfer legal custody to any of the following:

90 a. A relative or other individual who, after study, is found by the court to be qualified to receive and  
91 care for the juvenile;

92 b. A child welfare agency, private organization or facility which is licensed or otherwise authorized  
93 by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a  
94 delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the  
95 approval of the Director; or

96 c. The local board of social services of the county or city in which the court has jurisdiction or, at  
97 the discretion of the court, to the local board of the county or city in which the juvenile has residence if  
98 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for  
99 care and custody, provided that it has been given reasonable notice of the pendency of the case and an  
100 opportunity to be heard. However, in an emergency in the county or city in which the court has  
101 jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed  
102 ~~fourteen~~ 14 days without prior notice or an opportunity to be heard if the judge entering the placement  
103 order describes the emergency and the need for such temporary placement in the order. Nothing in this  
104 subdivision shall prohibit the commitment of a juvenile to any local board of social services in the  
105 Commonwealth when such local board consents to the commitment. The board to which the juvenile is  
106 committed shall have the final authority to determine the appropriate placement for the juvenile. Any  
107 order authorizing removal from the home and transferring legal custody of a juvenile to a local board of  
108 social services as provided in this subdivision shall be entered only upon a finding by the court that  
109 reasonable efforts have been made to prevent removal and that continued placement in the home would  
110 be contrary to the welfare of the juvenile, and the order shall so state;

111 14. Commit the juvenile to the Department of Juvenile Justice, but only if he is ~~eleven~~ 11 years of  
112 age or older and the current offense is (i) an offense which would be a felony if committed by an adult,  
113 (ii) an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has  
114 previously been found to be delinquent based on an offense which would be a felony if committed by  
115 an adult, or (iii) an offense which would be a Class 1 misdemeanor if committed by an adult and the  
116 juvenile has previously been adjudicated delinquent on ~~three~~ 3 occasions for offenses which would be  
117 Class 1 misdemeanors if committed by an adult;

118 15. Impose the penalty authorized by § 16.1-284;

119 16. Impose the penalty authorized by § 16.1-284.1;

120 17. Impose the penalty authorized by § 16.1-285.1;

121 18. Impose the penalty authorized by § 16.1-278.9; or

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, or any violation of a local ordinance adopted pursuant to § 18.2-138.1.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147; or for any violation of a local ordinance adopted pursuant to § 18.2-138.1. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

§ 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~~ 13 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, (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~~ 17 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), (iii) or (viii), the denial of a driver's license shall be for a period of ~~one~~ 1 year or until the juvenile reaches the age of ~~seventeen~~ 17, whichever is longer, for a first such offense or for a period of ~~one~~ 1 year or until the juvenile reaches the age of ~~eighteen~~ 18, 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~~ 6 months unless the offense is committed by a child under the age of ~~sixteen~~ 16 years and ~~three~~ 3 months, in which case the child's ability to apply for a driver's license shall be delayed for a period of ~~six~~ 6 months following the date he reaches the age of ~~sixteen~~ 16 and ~~three~~ 3 months. 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~~ 30 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~~ 2 years unless the offense is committed by a child under the age of ~~sixteen~~ 16 years and ~~three~~ 3 months, in which event the child's ability to apply for a driver's license shall be delayed for a period of ~~two~~ 2 years following the date he reaches the age of ~~sixteen~~ 16 and ~~three~~ 3 months.

A1. If a court finds that a child at least ~~thirteen~~ 13 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~~ 30 days. If such failure to comply involves a child under the age of ~~sixteen~~ 16 years and ~~three~~ 3 months, the child's ability to apply for a driver's license shall be delayed for a period of not less than ~~thirty~~ 30 days following the date he reaches the age of ~~sixteen~~ 16 and ~~three~~ 3 months.

If the court finds a second or subsequent such offense, it may order the denial of a driver's license for a period of ~~one~~ 1 year or until the juvenile reaches the age of ~~eighteen~~ 18, whichever is longer, or delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of ~~sixteen~~ 16 and ~~three~~ 3 months, as may be appropriate.

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

183 the physical custody of the court during any period of license denial.

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

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

195 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of  
196 subsection A, the child may be referred to a certified alcohol safety action program in accordance with  
197 § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child  
198 involves a violation designated under clause (iii), (iv), (v), (vii) or (viii) of subsection A, such child may  
199 be referred to appropriate rehabilitative or educational services upon such terms and conditions as the  
200 court may set forth.

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

214 E. Upon petition made at least ~~ninety~~ 90 days after issuance of the order, the court may review and  
215 withdraw any order of denial of a driver's license if for a first such offense or finding as provided in  
216 subsection A1. For a second or subsequent such offense or finding, the order may not be reviewed and  
217 withdrawn until ~~one~~ 1 year after its issuance.

218 F. If the finding as to such child involves a violation designated under clause ~~(i)~~, ~~(ii)~~, (v), (vi) or  
219 (vii) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the  
220 child's driver's license has been restored, the court shall or, in the event the violation resulted in the  
221 injury or death of any person *or if the finding involves a violation designated under clause (i) or (ii) or*  
222 *subsection A*, may discharge the child and dismiss the proceedings against him. Discharge and dismissal  
223 under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be  
224 retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill  
225 such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves  
226 a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed  
227 pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or  
228 § 18.2-251.