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HOUSE BILL NO. 764

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 18.2-251 of the Code of Virginia, relating to persons charged for the first time with certain drug offenses.

Patrons—Hurt and Marshall, D.W.; Senators: Hawkins and Reynolds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-251 of the Code of Virginia is 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 or § 19.2-299.2, as appropriate, 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 (i) 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, (ii) a community-based corrections program established pursuant to § 9.1-174, or (iii) 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 for a felony and up to twenty-four hours of community service for a misdemeanor. 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 *as originally charged* and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall *dispose of the case as follows: (i) if charged under subdivision A (a) of § 18.2-250, find the defendant guilty of a Class 6 felony, (ii) if charged under subdivision A (b) of § 18.2-250 or with a second offense under § 18.2-250.1, find the defendant guilty of a Class 2 misdemeanor, or (iii) if charged under subdivisions A (b1), A (b2) or A (c) of § 18.2-250, or with a first offense under § 18.2-250.1, 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, 22.1-315 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

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59 offense.

60 2. That the provisions of this act may result in a net increase in periods of imprisonment or
61 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
62 be determined for periods of imprisonment in state adult correctional facilities and is \$0 for
63 periods of commitment to the custody of the Department of Juvenile Justice.