

040026104

HOUSE BILL NO. 889

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 18.2-270, 19.2-120 and 19.2-294.1 of the Code of Virginia, relating to punishment and bail on charge of third DUI; joint prosecution of DUI and reckless driving.

Patrons—Bell, Cosgrove, Gear, Jones, S.C. and O'Bannon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270, 19.2-120 and 19.2-294.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional mandatory, minimum period of five days or, if the level was more than 0.25, for an additional mandatory, minimum period of 10 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$250, which shall not be suspended by the court.

B. 1. Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory, minimum fine of \$500, which shall not be suspended by the court, and by confinement in jail for not less than one month nor more than one year. Five days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court.

2. Any person convicted of a second offense committed within a period of five to ten 10 years of a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory, minimum fine of \$500, which shall not be suspended by the court, and by confinement in jail for not less than one month.

3. Upon conviction of a second offense within 10 years of a first offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional ~~minimum~~, mandatory ~~minimum~~ period of 10 days or, if the level was more than 0.25, for an additional mandatory, minimum period of 20 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$500, which shall not be suspended by the court.

C. Any person convicted of three or more offenses of § 18.2-266 committed within a 10-year period shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for 10 days that shall not be subject to suspension by the court. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. ~~Any~~ The sentence of any person convicted of a third offense committed within five years of an offense under § 18.2-266 shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for 30 days that shall not be subject to suspension by the court. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. The punishment of any person convicted of a fourth or subsequent offense committed within a 10-year period shall, upon conviction, include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed three years.

D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1000 and (ii) sentenced to a mandatory, minimum period of confinement of five days.

E. For the purpose of this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a prior conviction: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions

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59 of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or
60 town in this Commonwealth or the laws of any other state or of the United States substantially similar
61 to the provisions of §§ 18.2-51.4, and 18.2-266 through 18.2-269, or (iii) the provisions of subsection A
62 of § 46.2-341.24 or the substantially similar laws of any other state or of the United States. § 19.2-120.
63 Admission to bail.

64 Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to
65 the extent feasible, obtain the person's criminal history.

66 A. A person who is held in custody pending trial or hearing for an offense, civil or criminal
67 contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to
68 believe that:

69 1. He will not appear for trial or hearing or at such other time and place as may be directed, or

70 2. His liberty will constitute an unreasonable danger to himself or the public.

71 B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of
72 conditions will reasonably assure the appearance of the person or the safety of the public if the person is
73 currently charged with:

74 1. An act of violence as defined in § 19.2-297.1;

75 2. An offense for which the maximum sentence is life imprisonment or death;

76 3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II
77 controlled substance if (i) the maximum term of imprisonment is ten years or more and the person was
78 previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as
79 defined in § 18.2-248;

80 4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and
81 provides for a minimum, mandatory sentence;

82 5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1
83 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;

84 6. Any felony committed while the person is on release pending trial for a prior felony under federal
85 or state law or on release pending imposition or execution of sentence or appeal of sentence or
86 conviction;

87 7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted
88 of an offense listed in § 18.2-67.5:2 and the judicial officer finds probable cause to believe that the
89 person who is currently charged with one of these offenses committed the offense charged; or

90 8. A violation of § 18.2-46.5 or § 18.2-46.7; or

91 9. *A violation of § 18.2-266 or of a similar ordinance and the person has been previously twice*
92 *convicted of § 18.2-266 or of a similar ordinance.*

93 C. The court shall consider the following factors and such others as it deems appropriate in
94 determining, for the purpose of rebuttal of the presumption against bail described in subsection B,
95 whether there are conditions of release that will reasonably assure the appearance of the person as
96 required and the safety of the public:

97 1. The nature and circumstances of the offense charged;

98 2. The history and characteristics of the person, including his character, physical and mental
99 condition, family ties, employment, financial resources, length of residence in the community,
100 community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record
101 concerning appearance at court proceedings; and

102 3. The nature and seriousness of the danger to any person or the community that would be posed by
103 the person's release.

104 D. The judicial officer shall inform the person of his right to appeal from the order denying bail or
105 fixing terms of bond or recognizance consistent with § 19.2-124.

106 § 19.2-294.1. Dismissal of charge of reckless driving upon conviction of charge of driving while
107 intoxicated.

108 Whenever any person is ~~charged with~~ *convicted of* a violation of § 18.2-51.4 or § 18.2-266 or any
109 similar ordinances of any county, city, or town ~~and~~ *, the court shall dismiss any reckless driving charge,*
110 *whether brought pursuant to this Code or any similar ordinance of any county, city, or town,* growing
111 out of the same act or acts ~~and is convicted of one of these charges, the court shall dismiss the~~
112 ~~remaining charge.~~

113 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
114 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0**
115 **for periods of imprisonment in state adult correctional facilities and is \$0 for periods of**
116 **commitment to the custody of the Department of Juvenile Justice.**