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HOUSE BILL NO. 2655

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 16, 2005)

(Patrons Prior to Substitute—Delegates Hurt and McDougle [HB1872])

A BILL to amend and reenact §§ 18.2-267, 18.2-268.2 through 18.2-268.5, 18.2-268.8, 18.2-268.9, 18.2-268.10, 18.2-272, 46.2-391.2, and 46.2-391.4 of the Code of Virginia, relating to driving under the influence.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-267, 18.2-268.2 through 18.2-268.5, 18.2-268.8, 18.2-268.9, 18.2-268.10, 18.2-272, 46.2-391.2, and 46.2-391.4 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-267. Preliminary analysis of breath to determine alcoholic content of blood.

A. Any person who is suspected of a violation of §§ 18.2-266, 18.2-266.1, ~~or subsection B of § 18.2-272, or a similar ordinance~~ shall be entitled, if such equipment is available, to have his breath analyzed to determine the probable alcoholic content of his blood. The person shall also be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. His breath may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of Criminal Justice Services, Division of Forensic Science, shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department and is suspected by such officer to be guilty of a violation of ~~§§ 18.2-266, 18.2-266.1, or § 18.2-272~~ an offense listed in subsection A, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under ~~§§ 18.2-266, 18.2-266.1, or § 18.2-272~~ for an offense listed in subsection A.

D. Whenever the breath sample analysis indicates that alcohol is present in the person's blood, the officer may charge the person with a violation of ~~§§ 18.2-266, 18.2-266.1 or § 18.2-272, or a similar ordinance of the county, city or town where the arrest is made~~ an offense listed in subsection A. The person so charged shall then be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12, or of a similar ordinance of a county, city or town.

E. The results of the breath analysis shall not be admitted into evidence in any prosecution under ~~§§ 18.2-266, 18.2-266.1 or § 18.2-272~~ for an offense listed in subsection A, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of ~~§§ 18.2-266, 18.2-266.1, or § 18.2-272~~ committed an offense listed in subsection A.

F. Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of ~~§§ 18.2-266, 18.2-266.1 or § 18.2-272~~ committed an offense listed in subsection A, advise the person of his rights under the provisions of this section.

G. Nothing in this section shall be construed as limiting the provisions of §§ 18.2-268.1 through 18.2-268.12.

§ 18.2-268.2. Implied consent to post-arrest testing to determine drug or alcohol content of blood.

A. Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a highway, as defined in § 46.2-100, in this the Commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have samples of his blood, breath, or both blood and breath taken for a chemical test to determine the alcohol, drug, or both alcohol and drug content of his blood, if he is arrested for violation of §§ 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance within three hours of the alleged offense.

B. Any person so arrested for a violation of clause (i) or (ii) of § 18.2-266 or both, § 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance shall submit to a breath test. If the breath test is unavailable or the person is physically unable to submit to the breath test, a blood test shall be given. The accused shall, prior to administration of the test, be advised by the person administering the test that he has the right to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. If the equipment automatically produces a written printout of the breath test result, the printout, or a copy, shall be given to the accused.

C. A person, after having been arrested for a violation of clause (iii) or (iv) of § 18.2-266 or § 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance, may be required to submit to a

60 blood test to determine the drug or both drug and alcohol content of his blood. When a person, after
61 having been arrested for a violation of § 18.2-266 (i) or (ii) or both, submits to a breath test in
62 accordance with subsection B of this section or refuses to take or is incapable of taking such a breath
63 test, he may be required to submit to tests to determine the drug or both drug and alcohol content of his
64 blood if the law-enforcement officer has reasonable cause to believe the person was driving under the
65 influence of any drug or combination of drugs, or the combined influence of alcohol and drugs.

66 § 18.2-268.3. Refusal of tests; penalties; procedures.

67 A. *It shall be unlawful for a person who is arrested for a violation of § 18.2-266, 18.2-266.1 or*
68 *subsection B of § 18.2-272 or of a similar ordinance to unreasonably refuse to have samples of his*
69 *blood or breath or both blood and breath taken for chemical tests to determine the alcohol or drug*
70 *content of his blood as required by § 18.2-268.2 and any person who so unreasonably refuses is guilty*
71 *of a violation of this section.*

72 B. When a person is arrested for a violation of § 18.2-51.4, 18.2-266, 18.2-266.1 or, *subsection B of*
73 *§ 18.2-272 or of a similar ordinance and such person refuses to permit blood or breath or both blood*
74 *and breath samples to be taken for testing as required by § 18.2-268.2, the arresting officer shall advise*
75 *the person, from a form described in subsection B provided by the Office of the Executive Secretary of*
76 *the Supreme Court, that (i) a person who operates a motor vehicle upon a public highway in the*
77 *Commonwealth is deemed thereby, as a condition of such operation, to have consented to have samples*
78 *of his blood and breath taken for chemical tests to determine the alcohol or drug content of his blood,*
79 *(ii) a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, (iii) that*
80 *the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a*
81 *motor vehicle upon the highways of the Commonwealth, (iv) the criminal penalty for unreasonable*
82 *refusal within 10 years of a prior conviction for driving while intoxicated or unreasonable refusal is a*
83 *Class 2 misdemeanor, and (v) the criminal penalty for unreasonable refusal within 10 years of any two*
84 *prior convictions for driving while intoxicated or unreasonable refusal is a Class 1 misdemeanor; refuses*
85 *to permit blood or breath or both blood and breath samples to be taken for such tests. B. The form from*
86 *which the arresting officer shall advise the person arrested shall be provided by the Office of the*
87 *Executive Secretary of the Supreme Court and shall contain a brief statement of the law requiring the*
88 *taking of blood or breath samples, a statement that a finding of unreasonable refusal to consent may be*
89 *admitted as evidence at a criminal trial, and the penalties for refusal; a declaration of refusal; and an*
90 *acknowledgement of the .*

91 C. *The arresting officer shall, under oath before the magistrate, execute the form and certify, (i) that*
92 *he the defendant has refused to permit blood or breath or both blood and breath samples to be taken*
93 *for testing; (ii) that the officer has read the portion of the form described in subsection B to the*
94 *defendant and a line for the signature of the arresting officer arrested person; (iii) that the arrested*
95 *person, after having had the portion of the form described in subsection B read to him, has refused to*
96 *permit such sample or samples to be taken; and (iv) how many, if any, violations of this section,*
97 *§ 18.2-266, or any offense described in subsection E of 18.2-270 the arrested person has been convicted*
98 *of within the last 10 years. The form shall be signed by the arresting officer and the arresting officer*
99 *shall acknowledge before the magistrate that the form was read to the person arrested. The Such sworn*
100 *certification shall constitute probable cause for magistrate the magistrate shall promptly to issue a*
101 *warrant or summons charging the person with a violation of subsection A unreasonable refusal. and The*
102 *shall magistrate shall attach the executed and sworn advisement form to the warrant or summons. The*
103 *warrant or summons for a first offense under this section shall be executed in the same manner as a*
104 *criminal warrant or summons. If the person arrested has been taken to a medical facility for treatment*
105 *or evaluation of his medical condition, the arresting officer may read the advisement form to the person*
106 *at the medical facility, and issue, on the premises of the medical facility, a summons for a violation of*
107 *this section in lieu of securing a warrant or summons from the magistrate. The magistrate or arresting*
108 *officer, as the case may be, shall forward the executed advisement form and warrant or summons to the*
109 *appropriate court. The warrant or summons for a first offense under this section shall be executed in the*
110 *same manner as criminal warrants or summonses. If the person has been taken to a medical facility for*
111 *treatment or evaluation of his medical condition, the arresting officer at a medical facility may issue, on*
112 *the premises of the medical facility, a summons for a violation of subsection A in lieu of securing a*
113 *warrant.*

114 C. *Unreasonable refusal is a violation of this section and shall be an offense punishable as set forth*
115 *in §§ 18.2-268.3 and 18.2-268.4. Venue for the trial of the warrant or summons shall lie in the court of*
116 *the county or city in which the offense of driving under the influence of intoxicants is to be tried.*

117 D. *A first violation of this section is a civil offense and subsequent violations are criminal offenses.*
118 *For a first offense the court shall suspend the defendant's privilege to drive for a period of one year.*
119 *This suspension period is in addition to the suspension period provided under § 46.2-391.2.*

120 *If a person is found to have violated this section and within 10 years prior to the date of the refusal*
121 *he was found guilty of any of the following: a violation of this section, a violation of 18.2-266, or a*

122 violation of any offense listed in subsection E of § 18.2-270, arising out of separate occurrences or
123 incidents, he is guilty of a Class 2 misdemeanor and the court shall suspend the defendant's privilege to
124 drive for a period of three years. This suspension period is in addition to the suspension period
125 provided under § 46.2-391.2.

126 If a person is found guilty of a violation of this section and within 10 years prior to the date of the
127 refusal he was found guilty of any two of the following: a violation of this section, a violation of
128 18.2-266, or a violation of any offense listed in subsection E of § 18.2-270 arising out of separate
129 occurrences or incidents, he is guilty of a Class 1 misdemeanor and the court shall suspend the
130 defendant's privilege to drive for a period of three years. This suspension period is in addition to the
131 suspension period provided under § 46.2-391.2.

132 § 18.2-268.4. Trial and appeal for refusal.

133 A. Venue for the trial of the warrant or summons shall lie in the court of the county or city in which
134 the offense of driving under the influence of intoxicants or other offense listed in subsection A of
135 § 18.2-268.3 is to be tried.

136 B. The procedure for appeal and trial of a first offense of § 18.2-268.3 shall be the same as provided
137 by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall
138 be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth
139 shall be required to prove its case beyond a reasonable doubt.

140 If the court or jury finds the defendant guilty of a first offense as charged in the warrant or summons
141 issued pursuant to ~~§ 18.2-268.3~~, the court shall suspend the defendant's privilege to drive for a period of
142 one year.

143 B. Any person convicted of a violation of ~~§ 18.2-268.3~~ committed within 10 years of a prior offense
144 of ~~§ 18.2-266, § 18.2-268.3~~ or any offense set forth in subsection E of ~~§ 18.2-270~~ arising out of separate
145 occurrences or incidents, as charged in the warrant or summons issued pursuant to ~~§ 18.2-268.3~~, is guilty
146 of a Class 2 misdemeanor and the court shall suspend the defendant's privilege to drive for a period of
147 three years. This suspension period is in addition to the suspension period provided under ~~§ 46.2-391.2~~.

148 C. Any person convicted of a violation of ~~§ 18.2-268.3~~ committed within 10 years of any
149 combination of two or more offenses of ~~§ 18.2-266, § 18.2-268.3~~ or any offense set forth in subsection
150 E of ~~§ 18.2-270~~ arising out of separate occurrences or incidents, as charged in the warrant or summons
151 issued pursuant to ~~§ 18.2-268.3~~, is guilty of a Class 1 misdemeanor and the court shall suspend the
152 defendant's privilege to drive for a period of three years. This suspension period is in addition to the
153 suspension period provided under ~~§ 46.2-391.2~~.

154 D. If the defendant pleads guilty to a violation of §§ 18.2-266, ~~or § 18.2-266.1~~, or subsection B of
155 § 18.2-272 or of a similar ordinance, the court may dismiss the warrant or summons.

156 The court shall forward the defendant's license to the Commissioner of the Department of Motor
157 Vehicles of Virginia as in other cases of similar nature for suspension of license. If the defendant
158 appeals his conviction, the court shall return the license to him upon his appeal being perfected;
159 however, the defendant's license shall not be returned during any period of suspension imposed under
160 § 46.2-391.2.

161 § 18.2-268.5. Qualifications and liability of persons authorized to take blood sample; procedure for
162 taking samples.

163 For purposes of this article, only a physician, registered nurse, licensed practical nurse, phlebotomist,
164 graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon
165 the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine, pvp
166 iodine, povidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood
167 is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which
168 will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall
169 withdraw blood for the purpose of determining its alcohol or drug or both alcohol and drug content. It is
170 a Class 3 misdemeanor to reuse single-use-only needles or syringes. No civil liability shall attach to any
171 person authorized to withdraw blood as a result of the act of withdrawing blood as provided in this
172 section from any person submitting thereto, provided the blood was withdrawn according to recognized
173 medical procedures. However, the person shall not be relieved from liability for negligence in the
174 withdrawing of any blood sample.

175 No person arrested for a violation of §§ 18.2-266, 18.2-266.1, or subsection B of § 18.2-272, or a
176 similar ordinance shall be required to execute in favor of any person or corporation a waiver or release
177 of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of
178 blood as provided for in this section.

179 § 18.2-268.8. Fees.

180 Payment for withdrawing blood shall not exceed \$25, which shall be paid out of the appropriation
181 for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for a
182 violation of §§ 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance, or is

183 placed under the purview of a probational, educational, or rehabilitational program as set forth in
184 § 18.2-271.1, the amount charged by the person withdrawing the sample shall be taxed as part of the
185 costs of the criminal case and shall be paid into the general fund of the state treasury.

186 If the person whose blood sample was withdrawn is subsequently convicted for violation of
187 §§ 18.2-266, 18.2-266.1, or *subsection B of* § 18.2-272 or a similar ordinance, a fee of \$25 for testing
188 the first blood sample by the Division shall be taxed as part of the costs of the criminal case and shall
189 be paid into the general fund of the state treasury.

190 § 18.2-268.9. Assurance of breath-test validity; use of test results as evidence.

191 To be capable of being considered valid as evidence in a prosecution under §§ 18.2-266, 18.2-266.1,
192 or *subsection B of* § 18.2-272, or a similar ordinance, chemical analysis of a person's breath shall be
193 performed by an individual possessing a valid license to conduct such tests, with a type of equipment
194 and in accordance with methods approved by the Department of Criminal Justice Services, Division of
195 Forensic Science. The Division shall test the accuracy of the breath-testing equipment at least once
196 every six months.

197 The Division shall establish a training program for all individuals who are to administer the breath
198 tests. Upon a person's successful completion of the training program, the Division may license him to
199 conduct breath-test analyses. Such license shall identify the specific types of breath test equipment upon
200 which the individual has successfully completed training.

201 Any individual conducting a breath test under the provisions of § 18.2-268.2 shall issue a certificate
202 which will indicate that the test was conducted in accordance with the Division's specifications, the
203 equipment on which the breath test was conducted has been tested within the past six months and has
204 been found to be accurate, the name of the accused, that prior to administration of the test the accused
205 was advised of his right to observe the process and see the blood alcohol reading on the equipment used
206 to perform the breath test, the date and time the sample was taken from the accused, the sample's
207 alcohol content, and the name of the person who examined the sample. This certificate, when attested by
208 the individual conducting the breath test, shall be admissible in any court in any criminal or civil
209 proceeding as evidence of the facts therein stated and of the results of such analysis. Any such
210 certificate of analysis purporting to be signed by a person authorized by the Division shall be admissible
211 in evidence without proof of seal or signature of the person whose name is signed to it. A copy of the
212 certificate shall be promptly delivered to the accused.

213 The officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in
214 the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may
215 ~~make~~ *administer* the breath test ~~or~~ *and* analyze the results.

216 § 18.2-268.10. Evidence of violation of driving under the influence offenses.

217 A. In any trial for a violation of §§ 18.2-266, 18.2-266.1, or *subsection B of* § 18.2-272 or a similar
218 ordinance, the admission of the blood or breath test results shall not limit the introduction of any other
219 relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of
220 the result of any blood or breath tests, consider other relevant admissible evidence of the condition of
221 the accused. If the test results indicate the presence of any drug other than alcohol, the test results shall
222 be admissible only if other competent evidence has been presented to relate the presence of the drug or
223 drugs to the impairment of the accused's ability to drive or operate any motor vehicle, engine or train
224 safely.

225 B. The failure of an accused to permit a blood or breath sample to be taken to determine the alcohol
226 or drug content of his blood is not evidence and shall not be subject to comment by the Commonwealth
227 at the trial of the case, except in rebuttal or pursuant to subsection C; nor shall the fact that a blood or
228 breath test had been offered the accused be evidence or the subject of comment by the Commonwealth,
229 except in rebuttal or pursuant to subsection C.

230 C. Evidence of a finding against the defendant under § 18.2-268.3 for his unreasonable refusal to
231 permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood shall
232 be admissible into evidence, upon the motion of the Commonwealth or the defendant, for the sole
233 purpose of explaining the absence at trial of a chemical test of such sample. When admitted pursuant to
234 this subsection such evidence shall not be considered evidence of the accused's guilt.

235 D. The court or jury trying the case involving a violation of clause (ii), (iii) or (iv) of § 18.2-266 or
236 § 18.2-266.1, or ~~§ 18.2-272~~ *a similar ordinance* shall determine the innocence or guilt of the defendant
237 from all the evidence concerning his condition at the time of the alleged offense.

238 § 18.2-272. Driving after forfeiture of license.

239 A. Any person who drives or operates any motor vehicle, engine or train in the Commonwealth
240 during the time for which he was deprived of the right to do so (i) upon conviction of a violation of
241 § 18.2-268.3 or of an offense set forth in subsection E of § 18.2-270, (ii) by § 18.2-271 or § 46.2-391.2,
242 (iii) after his license has been revoked pursuant to § 46.2-389 or § 46.2-391, or (iv) in violation of the
243 terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, is guilty of a Class 1
244 misdemeanor, except as otherwise provided in § 46.2-391, and is subject to administrative revocation of

245 his driver's license pursuant to §§ 46.2-389 and 46.2-391.

246 Nothing in this section or §§ 18.2-266, 18.2-270 or ~~§~~18.2-271, shall be construed as conflicting with
247 or repealing any ordinance or resolution of any city, town or county which restricts still further the right
248 of such persons to drive or operate any such vehicle or conveyance.

249 B. Regardless of compliance with any other restrictions on his privilege to drive or operate a motor
250 vehicle, it shall be a violation of this section for any person whose privilege to drive or operate a motor
251 vehicle has been restricted, suspended or revoked by application of the provisions of the Code set forth
252 in subsection A because of a violation of § 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-268.3, 46.2-341.24, or
253 a similar ordinance or law of another state or the United States to ~~do so~~ drive or operate a motor
254 vehicle while he has a blood alcohol content of 0.02 percent or more.

255 Any person suspected of a violation of this subsection shall be entitled to a preliminary breath test in
256 accordance with the provisions of § 18.2-267, shall be deemed to have given his implied consent to have
257 samples of his blood, breath or both taken for analysis pursuant to the provisions of § 18.2-268.2, and,
258 when charged with a violation of this subsection, shall be subject to the provisions of §§ 18.2-268.1
259 through 18.2-268.12.

260 § 46.2-391.2. Administrative suspension of license or privilege to operate a motor vehicle.

261 A. If a breath test is taken pursuant to § 18.2-268.2 or any similar ordinance of any county, city or
262 town and (i) the results show a blood alcohol content of 0.08 percent or more by weight by volume or
263 0.08 grams or more per 210 liters of breath, or (ii) the results, for persons under 21 years of age, show
264 a blood alcohol concentration of 0.02 percent or more by weight by volume or 0.02 grams or more per
265 210 liters of breath or (iii) the person refuses to submit to the breath test in violation of § 18.2-268.3 or
266 any similar ~~local~~ ordinance, and upon issuance of a petition or summons, or upon issuance of a warrant
267 by the magistrate, for a violation of §§ 18.2-51.4, 18.2-266, or ~~§~~18.2-266.1, or any substantially similar
268 ~~local~~ ordinance, or upon the issuance of a warrant or summons by the magistrate or by the arresting
269 officer at a medical facility for a violation of § 18.2-268.3, or any similar ~~local~~ ordinance, the person's
270 license shall be suspended immediately or in the case of (i) an unlicensed person, (ii) a person whose
271 license is otherwise suspended or revoked, or (iii) a person whose driver's license is from a jurisdiction
272 other than the Commonwealth, such person's privilege to operate a motor vehicle in the Commonwealth
273 shall be suspended immediately. The period of suspension of the person's license or privilege to drive
274 shall be seven days, unless the petition, summons or warrant issued charges the person with a second or
275 subsequent offense. If the person is charged with a second offense the suspension shall be for 60 days.
276 If not already expired, the period of suspension shall expire on the day and time of trial of the offense
277 charged on the petition, summons or warrant, except that it shall not so expire during the first seven
278 days of the suspension. If the person is charged with a third or subsequent offense, the suspension shall
279 be until the day and time of trial of the offense charged on the petition, summons or warrant.

280 A law-enforcement officer, acting on behalf of the Commonwealth, shall serve a notice of suspension
281 personally on the arrested person. When notice is served, the arresting officer shall promptly take
282 possession of any driver's license held by the person and issued by the Commonwealth and shall
283 promptly deliver it to the magistrate. Any driver's license taken into possession under this section shall
284 be forwarded promptly by the magistrate to the clerk of the general district court or, as appropriate, the
285 court with jurisdiction over juveniles of the jurisdiction in which the arrest was made together with any
286 petition, summons or warrant, the results of the breath test, if any, and the report required by subsection
287 B. A copy of the notice of suspension shall be forwarded forthwith to both (a) the general district court
288 or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was
289 made and (b) the Commissioner. Transmission of this information may be made by electronic means.

290 The clerk shall promptly return the suspended license to the person at the expiration of the
291 suspension. Whenever a suspended license is to be returned under this section or § 46.2-391.4, the
292 person may elect to have the license returned in person at the clerk's office or by mail to the address on
293 the person's license or to such other address as he may request.

294 B. Promptly after arrest and service of the notice of suspension, the arresting officer shall forward to
295 the magistrate a sworn report of the arrest that shall include (i) information which adequately identifies
296 the person arrested and (ii) a statement setting forth the arresting officer's grounds for belief that the
297 person violated §§ 18.2-51.4, 18.2-266, or ~~§~~18.2-266.1, or a similar ~~local~~ ordinance or refused to submit
298 to a breath test in violation of § 18.2-268.3 or a similar ~~local~~ ordinance. The report required by this
299 subsection shall be submitted on forms supplied by the Supreme Court.

300 C. Any person whose license or privilege to operate a motor vehicle has been suspended under
301 subsection A may, during the period of the suspension, request the general district court or, as
302 appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made to
303 review that suspension. The court shall review the suspension within the same time period as the court
304 hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this
305 matter precedence over all other matters on its docket. If the person proves to the court by a

306 preponderance of the evidence that the arresting officer did not have probable cause for the arrest, that
307 the magistrate did not have probable cause to issue the warrant, or that there was not probable cause for
308 issuance of the petition, the court shall rescind the suspension, or that portion of it that exceeds seven
309 days if there was not probable cause to charge a second offense or 60 days if there was not probable
310 cause to charge a third or subsequent offense, and the clerk of the court shall forthwith, or at the
311 expiration of the reduced suspension time, (i) return the suspended license, if any, to the person unless
312 the license has been otherwise suspended or revoked, (ii) deliver to the person a notice that the
313 suspension under § 46.2-391.2 has been rescinded or reduced, and (iii) forward to the Commissioner a
314 copy of the notice that the suspension under § 46.2-391.2 has been rescinded or reduced. Otherwise, the
315 court shall affirm the suspension. If the person requesting the review fails to appear without just cause,
316 his right to review shall be waived.

317 The court's findings are without prejudice to the person contesting the suspension or to any other
318 potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings,
319 civil or criminal.

320 D. If a person whose license or privilege to operate a motor vehicle is suspended under subsection A
321 is convicted under §§ 18.2-36.1, 18.2-51.4, 18.2-266, or § 18.2-266.1, or any similar local ordinance
322 during the suspension imposed by subsection A, and if the court decides to issue the person a restricted
323 permit under subsection E of § 18.2-271.1, such restricted permit shall not be issued to the person before
324 the expiration of the first seven days of the suspension imposed under subsection A.

325 § 46.2-391.4. When suspension to be rescinded.

326 Notwithstanding any other provision of § 46.2-391.2, a subsequent dismissal or acquittal of all the
327 charges under §§ 18.2-36.1, 18.2-51.4, 18.2-266, and 18.2-268.3 or any similar local ordinances, for the
328 same offense for which a person's driver's license or privilege to operate a motor vehicle was suspended
329 under § 46.2-391.2 shall result in the immediate rescission of the suspension. In any such case, the clerk
330 of the court shall forthwith (i) return the suspended license, if any, to the person unless the license has
331 been otherwise suspended or revoked, (ii) deliver to the person a notice that the suspension under
332 § 46.2-391.2 has been rescinded and (iii) forward to the Commissioner a copy of the notice that the
333 suspension under § 46.2-391.2 has been rescinded.