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SENATE BILL NO. 589

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 18.2-271.1, 46.2-320, and 53.1-131.2 of the Code of Virginia, relating to probation, education, rehabilitation of person charged with nonpayment of child support.

Patron—Marsden

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-271.1, 46.2-320, and 53.1-131.2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person convicted under law of another state.

A. Any person convicted of a first or second offense of § 18.2-266 (i), (ii), (iii) or (iv), or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. However, upon motion of a person convicted of any such offense following an assessment of the person conducted by an alcohol safety action program, the court, for good cause, may decline to order participation in such a program if the assessment by the alcohol safety action program indicates that intervention is not appropriate for such person. In no event shall such persons be permitted to enter any such program which is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this section and to § 18.2-271.2. However, any person charged with a violation of a first or second offense of § 18.2-266 (i), (ii), (iii) or (iv), or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district.

B. The court shall require the person entering such program under the provisions of this section to pay a fee of no less than \$250 but no more than \$300. A reasonable portion of such fee, as may be determined by the Commission on VASAP, but not to exceed 10 percent, shall be forwarded monthly to be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention under any such program may be charged.

C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized by § 18.2-270 or § 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if the conviction was for a second offense committed within less than ~~ten~~ 10 years after a first such offense, the court shall order that restoration of the person's license to drive be conditioned upon the installation of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered to the person, in whole or in part, for a period of six months beginning at the end of the three year license revocation, unless such a system has already been installed for six months prior to that time pursuant to a restricted license order under subsection E of this section. Upon a finding that a person so convicted is required to participate in the program described herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to such program. The court may then proceed to issue an order in accordance with subsection E of this section, if the court finds that the person so convicted is eligible for a restricted license. If the court finds good cause for a person not to participate in such program or subsequently that such person has violated, without good cause, any of the conditions set forth by the court in entering the program, the court shall dispose of the case as if no program had been entered, in which event the revocation provisions of § 46.2-389 and subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition of the case, send a copy of its order to the Commissioner of the Department of Motor Vehicles. If such order provides for the issuance of a restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any such disposition shall

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59 be allowed as provided by law. The time within which an appeal may be taken shall be calculated from
60 the date of the final disposition of the case or any motion for rehearing, whichever is later.

61 D. Any person who has been convicted in another state of the violation of a law of such state
62 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose
63 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions
64 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or
65 city in which he resides that he be given probation and assigned to a program as provided in subsection
66 A of this section and that, upon entry into such program, he be issued an order in accordance with
67 subsection E of this section. If the court finds that such person would have qualified therefor if he had
68 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the
69 court may grant the petition and may issue an order in accordance with subsection E of this section as
70 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of
71 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the
72 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by
73 the court, the court shall dispose of the case as if no program had been entered and shall notify the
74 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or
75 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
76 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
77 of the Department of Motor Vehicles.

78 No period of license suspension or revocation shall be imposed pursuant to this subsection which,
79 when considered together with any period of license suspension or revocation previously imposed for the
80 same offense in any state, results in such person's license being suspended for a period in excess of the
81 maximum periods specified in this subsection.

82 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
83 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
84 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
85 person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i)
86 travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety
87 action program; (iii) travel during the hours of such person's employment if the operation of a motor
88 vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a
89 student, upon proper written verification to the court that such person is enrolled in a continuing
90 program of education; (v) travel for health care services, including medically necessary transportation of
91 an elderly parent or, as designated by the court, any person residing in the person's household with a
92 serious medical problem upon written verification of need by a licensed health professional; (vi) travel
93 necessary to transport a minor child under the care of such person to and from school, day care, and
94 facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child
95 of such person; (viii) travel to a screening, evaluation and education program entered pursuant to
96 § 18.2-251 or subsection H of § 18.2-258.1; ~~or~~ (ix) travel to and from court appearances in which he is
97 a subpoenaed witness or a party and appointments with his probation officer and to and from any
98 programs required by the court or as a condition of probation; *or (x) travel to and from appointments*
99 *required as a participant in a court-ordered intensive case monitoring program for child support.* No
100 restricted license issued pursuant to this subsection shall permit any person to operate a commercial
101 motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The
102 court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in
103 accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of the Department
104 of Motor Vehicles a copy of its order entered pursuant to this subsection, which shall specifically
105 enumerate the restrictions imposed and contain such information regarding the person to whom such a
106 permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy
107 of its order to the person so convicted who may operate a motor vehicle on the order until receipt from
108 the Commissioner of the Department of Motor Vehicles of a restricted license, if the order provides for
109 a restricted license for that time period. A copy of such order and, after receipt thereof, the restricted
110 license shall be carried at all times while operating a motor vehicle. Any person who operates a motor
111 vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of
112 § 18.2-272. Such restricted license shall be conditioned upon enrollment within 15 days in, and
113 successful completion of, a program as described in subsection A of this section. No restricted license
114 shall be issued during the first four months of a revocation imposed pursuant to subsection B of
115 § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed
116 within 10 years of a first such offense. No restricted license shall be issued during the first year of a
117 revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second
118 offense of the type described therein committed within five years of a first such offense. No restricted
119 license shall be issued during any revocation period imposed pursuant to subsection C of § 18.2-271 or
120 subsection B of § 46.2-391. Notwithstanding the provisions of § 46.2-411, the fee charged pursuant to

§ 46.2-411 for reinstatement of the driver's license of any person whose privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a county, city or town, or of any federal law or the laws of any other state similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411, \$40 shall be transferred to the Commission on VASAP, and \$25 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

F. The court shall have jurisdiction over any person entering such program under any provision of this section until such time as the case has been disposed of by either successful completion of the program, or revocation due to ineligibility or violation of a condition or conditions imposed by the court, whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall be made by first-class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than 10 days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent forthwith to the Commissioner of the Department of Motor Vehicles.

G. For the purposes of this section, any court which has convicted a person of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of license revocation related to that conviction, for the limited purposes of (i) referring such person to a certified alcohol safety action program, (ii) providing for a restricted permit for such person in accordance with the provisions of subsection E, and (iii) imposing terms, conditions and limitations for actions taken pursuant to clauses (i) and (ii), whether or not it took either such action at the time of the conviction. This continuing jurisdiction is subject to the limitations of subsection E that provide that no restricted license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391 or during the first four months or first year, whichever is applicable, of the revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391. The provisions of this subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on, after and at any time prior to July 1, 2003.

H. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any gifts or bequests of money or property, and any grant, loan, service, payment or property from any source, including the federal government, for the purpose of driver alcohol education. Any such gifts, bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

I. The Commission on VASAP, or any county, city, town, or any combination thereof may establish and, if established, shall operate, in accordance with the standards and criteria required by this subsection, alcohol safety action programs in connection with highway safety. Each such program shall operate under the direction of a local independent policy board chosen in accordance with procedures approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges who regularly hear or heard cases involving driving under the influence and are familiar with their local alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish minimum standards and criteria for the implementation and operation of such programs and shall establish procedures to certify all such programs to ensure that they meet the minimum standards and criteria stipulated by the Commission. The Commission shall also establish criteria for the administration of such programs for public information activities, for accounting procedures, for the auditing requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state programs and local programs run in conjunction with any county, city or town and costs incurred by the Commission. The Commission shall submit an annual report as to actions taken at the close of each calendar year to the Governor and the General Assembly.

J. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

§ 46.2-320. Other grounds for refusal or suspension.

A. The Department may refuse to grant an application for a driver's license in any of the circumstances set forth in § 46.2-608 as circumstances justifying the refusal of an application for the registration of a motor vehicle. The Department may refuse to issue or reissue a driver's license for the willful failure or refusal to pay any taxes or fees required to be collected or authorized to be collected by the Department.

182 B. The Commissioner may enter into an agreement with the Department of Social Services whereby
183 the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice
184 from the Department of Social Services that the person (i) is delinquent in the payment of child support
185 by ~~ninety~~ 90 days or more or in an amount of \$5,000 or more or (ii) has failed to comply with a
186 subpoena, summons or warrant relating to paternity or child support proceedings. A suspension or
187 refusal to renew authorized pursuant to this section shall not be effective until ~~thirty~~ 30 days after
188 service on the delinquent obligor of notice of intent to suspend or refuse to renew. The notice of intent
189 shall be served on the obligor by the Department of Social Services (i) by certified mail, return receipt
190 requested, sent to the obligor's last known addresses as shown in the records of the Department or the
191 Department of Social Services or (ii) pursuant to § 8.01-296, or (iii) service may be waived by the
192 obligor in accordance with procedures established by the Department of Social Services. The obligor
193 shall be entitled to a judicial hearing if a request for a hearing is made, in writing, to the Department of
194 Social Services within ~~ten~~ 10 days from service of the notice of intent. Upon receipt of the request for a
195 hearing, the Department of Social Services shall petition the court that entered or is enforcing the order,
196 requesting a hearing on the proposed suspension or refusal to renew. The court shall authorize the
197 suspension or refusal to renew only if it finds that the obligor's noncompliance with the child support
198 order was willful. Upon a showing by the Department of Social Services that the obligor is delinquent
199 in the payment of child support by ~~ninety~~ 90 days or more or in an amount of \$5,000 or more, the
200 burden of proving that the delinquency was not willful shall rest upon the obligor. The Department shall
201 not suspend or refuse to renew the driver's license until a final determination is made by the court.

202 C. At any time after service of a notice of intent, the person may petition the juvenile and domestic
203 relations district court in the jurisdiction where he resides for the issuance of a restricted license to be
204 used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good
205 cause, the court may provide that such person be issued a restricted permit to operate a motor vehicle
206 for any of the purposes set forth in subsection E of § 18.2-271.1. A restricted license issued pursuant to
207 this subsection shall not permit any person to operate a commercial motor vehicle as defined in
208 § 46.2-341.4. The court shall order the surrender of the person's license to operate a motor vehicle, to be
209 disposed of in accordance with the provisions of § 46.2-398, and shall forward to the Commissioner a
210 copy of its order entered pursuant to this subsection. The order shall specifically enumerate the
211 restrictions imposed and contain such information regarding the person to whom such a permit is issued
212 as is reasonably necessary to identify him.

213 D. The Department shall not renew a driver's license or terminate a license suspension imposed
214 pursuant to this section until it has received from the Department of Social Services a certification that
215 the person has (i) paid the delinquency in full; (ii) reached an agreement with the Department of Social
216 Services to satisfy the delinquency within a period not to exceed ~~ten~~ 10 years and at least one payment,
217 representing at least five percent of the total delinquency or \$500, whichever is greater, has been made
218 pursuant to the agreement; ~~or~~; (iii) complied with a subpoena, summons or warrant relating to a
219 paternity or child support proceeding; *or (iv) completed or is successfully participating in an intensive*
220 *case monitoring program for child support ordered by a juvenile and domestic relations district court*
221 *for noncustodial parents, as determined by the court.* Certification by the Department of Social Services
222 shall be made by electronic or telephonic communication and shall be made on the same work day that
223 payment required by clause (i) or (ii) is made.

224 § 53.1-131.2. Assignment to a home/electronic incarceration program; payment to defray costs;
225 escape; penalty.

226 A. Any court having jurisdiction for the trial of a person charged with a criminal offense, a traffic
227 offense or an offense under Chapter 5 (§ 20-61 et seq.) of Title 20, *or failure to pay child support*
228 *pursuant to a court order* may, if the defendant is convicted and sentenced to confinement in a state or
229 local correctional facility, and if it appears to the court that such an offender is a suitable candidate for
230 home/electronic incarceration, assign the offender to a home/electronic incarceration program as a
231 condition of probation, if such program exists, under the supervision of the sheriff, the administrator of
232 a local or regional jail, or a Department of Corrections probation and parole district office established
233 pursuant to § 53.1-141. However, any offender who is convicted of any of the following violations of
234 Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 shall not be eligible for participation in the home/electronic
235 incarceration program: (i) first and second degree murder and voluntary manslaughter under Article 1
236 (§ 18.2-30 et seq.); (ii) mob-related felonies under Article 2 (§ 18.2-38 et seq.); (iii) any kidnapping or
237 abduction felony under Article 3 (§ 18.2-47 et seq.); (iv) any malicious felonious assault or malicious
238 bodily wounding under Article 4 (§ 18.2-51 et seq.); (v) robbery under § 18.2-58.1; or (vi) any criminal
239 sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.). The court may further authorize
240 the offender's participation in work release employment or educational or other rehabilitative programs
241 as defined in § 53.1-131 *or, as appropriate, in a court-ordered intensive case monitoring program for*
242 *child support.* The court shall be notified in writing by the director or administrator of the program to
243 which the offender is assigned of the offender's place of home/electronic incarceration, place of

employment, and the location of any educational or rehabilitative program in which the offender participates.

B. In any city or county in which a home/electronic incarceration program established pursuant to this section is available, the court, subject to approval by the sheriff or the jail superintendent of a local or regional jail, may assign the accused to such a program pending trial if it appears to the court that the accused is a suitable candidate for home/electronic incarceration.

C. Any person who has been sentenced to jail or convicted and sentenced to confinement in prison but is actually serving his sentence in jail, after notice to the attorney for the Commonwealth of the convicting jurisdiction, may be assigned by the sheriff to a home/electronic incarceration program under the supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole office established pursuant to § 53.1-141. However, if the offender violates any provision of the terms of the home/electronic incarceration agreement, the offender may have the assignment revoked and, if revoked, shall be held in the jail facility to which he was originally sentenced. Such person shall be eligible if his term of confinement does not include a sentence for a conviction of a felony violent crime, a felony sexual offense, burglary or manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a Schedule I or Schedule II controlled substance. The court shall retain authority to remove the offender from such home/electronic incarceration program. The court which sentenced the offender shall be notified in writing by the sheriff or the administrator of a local or regional jail of the offender's place of home/electronic incarceration and place of employment or other rehabilitative program.

D. The Board may prescribe regulations to govern home/electronic incarceration programs.

E. Any offender or accused assigned to such a program by the court or sheriff who, without proper authority or just cause, leaves his place of home/electronic incarceration, the area to which he has been assigned to work or attend educational or other rehabilitative programs, *including a court-ordered intensive case monitoring program for child support*, or the vehicle or route of travel involved in his going to or returning from such place, is guilty of a Class 1 misdemeanor. An offender or accused who is found guilty of a violation of this section shall be ineligible for further participation in a home/electronic incarceration program during his current term of confinement.

F. The director or administrator of a home/electronic incarceration program who also operates a residential program may remove an offender from a home/electronic incarceration program and place him in such residential program if the offender commits a noncriminal program violation. The court shall be notified of the violation and of the placement of the offender in the residential program.

G. The director or administrator of a home/electronic incarceration program shall charge the offender or accused a fee for participating in the program to pay for the cost of home/electronic incarceration equipment. The offender or accused shall be required to pay the program for any damage to the equipment which is in his possession or for failure to return the equipment to the program.

H. Any wages earned by an offender or accused assigned to a home/electronic incarceration program and participating in work release shall be paid to the director or administrator after standard payroll deductions required by law. Distribution of the money collected shall be made in the following order of priority to:

1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be disbursed according to the terms of such order;

2. Pay any fines, restitution or costs as ordered by the court;

3. Pay travel and other such expenses made necessary by his work release employment or participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

4. Defray the offender's keep.

The balance shall be credited to the offender's account or sent to his family in an amount the offender so chooses.

The Board of Corrections shall promulgate regulations governing the receipt of wages paid to persons participating in such programs, the withholding of payments and the disbursement of appropriate funds.

I. For the purposes of this section, "sheriff" means the sheriff of the jurisdiction where the person charged with the criminal offense was convicted and sentenced, provided that the sheriff may designate a deputy sheriff or regional jail administrator to assign offenders to home/electronic incarceration programs pursuant to this section.