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HOUSE BILL NO. 1443

Offered January 12, 2011

Prefiled November 15, 2010

A BILL to amend and reenact §§ 18.2-250.1, 18.2-251, 18.2-252, and 18.2-259.1 of the Code of Virginia, relating to penalties for simple possession of marijuana.

Patron—Morgan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-250.1, 18.2-251, 18.2-252, and 18.2-259.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-250.1. Possession of marijuana unlawful.

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.). *The attorney for the Commonwealth or the county, city or town attorney may prosecute such a case. Any violation of this section may be charged by summons.*

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

Any person who violates this section ~~shall be guilty of a misdemeanor, and be confined in jail not more than thirty days and a fine is subject to a civil penalty of not more than \$500; either or both; any person, upon a second or subsequent conviction of a violation of this section, shall be guilty of a Class 1 misdemeanor payable to the Literary Fund.~~

B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of marijuana is necessary for the performance of their duties.

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any *criminal* 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 treatment and/or education program or services, 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. The program or services 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 Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based probation services agency 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 treatment or education program or services, (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 24 hours of

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59 community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising
60 probation agency or personnel of any program or agency approved by the supervising probation agency.

61 The court shall, unless done at arrest, order the accused to report to the original arresting
62 law-enforcement agency to submit to fingerprinting.

63 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
64 otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person
65 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without
66 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent
67 proceedings.

68 Notwithstanding any other provision of this section, whenever a court places an individual on
69 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
70 for purposes of §§ 18.2-259.1, 22.1-315 and 46.2-390.1, and the driver's license forfeiture provisions of
71 those sections shall be imposed. The provisions of this paragraph shall not be applicable to any offense
72 for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same
73 offense.

74 § 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing, and
75 treatment or education.

76 The trial judge or court trying the case of (i) any person found guilty of ~~violating a criminal~~
77 *violation of* any law concerning the use, in any manner, of drugs, controlled substances, narcotics,
78 marijuana, noxious chemical substances and like substances or (ii) *any minor subjected to a civil penalty*
79 *for violation of § 18.2-250.1*, shall condition any suspended sentence *or suspension of any penalty* by
80 first requiring such person to agree to undergo a substance abuse screening pursuant to § 18.2-251.01
81 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by
82 the court. Such testing shall be conducted by the supervising probation agency or by personnel of any
83 program or agency approved by the supervising probation agency. The cost of such testing ordered by
84 the court shall be paid by the Commonwealth and taxed as a part of the costs of such ~~criminal~~
85 proceedings. The judge or court shall order the person, as a condition of any suspended sentence *or*
86 *suspended civil penalty*, to undergo such treatment or education for substance abuse, if available, as the
87 judge or court deems appropriate based upon consideration of the substance abuse assessment. The
88 treatment or education shall be provided by a program or agency licensed by the Department of
89 Behavioral Health and Developmental Services, by a similar program or services available through the
90 Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes
91 a sentence of 12 months or less, by a similar program or services available through a local or regional
92 jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP
93 program certified by the Commission on VASAP.

94 § 18.2-259.1. Forfeiture of driver's license for violations of article.

95 A. In addition to any other sanction or penalty imposed for a *criminal* violation of this article *or for*
96 *a violation of § 18.2-250.1 committed by a minor*, the (i) judgment of *either a* conviction under this
97 article *or of a violation of § 18.2-250.1 by a minor* or (ii) placement on probation following deferral of
98 further proceedings under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of itself
99 operate to deprive the person so convicted or placed on probation after deferral of proceedings under
100 § 18.2-251 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine,
101 or train in the Commonwealth for a period of six months from the date of such judgment or placement
102 on probation. Such license forfeiture shall be in addition to and shall run consecutively with any other
103 license suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed
104 on probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9
105 shall not have his license forfeited pursuant to this section for the same offense.

106 B. The court trying the case shall order any person so convicted or placed on probation *or any minor*
107 *so penalized for a violation of § 18.2-250.1* to surrender his driver's license to be disposed of in
108 accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of any
109 such conviction *or judgment* entered and of the license forfeiture to be imposed.

110 C. In those cases where the court determines there are compelling circumstances warranting an
111 exception, the court may provide that any individual be issued a restricted license to operate a motor
112 vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued
113 pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in
114 the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender
115 of such person's license in accordance with the provisions of subsection B and shall forward to the
116 Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
117 subsection. This order shall specifically enumerate the restrictions imposed and contain such information
118 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
119 The court shall also provide a copy of its order to such person who may operate a motor vehicle on the
120 order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license,

121 but only if the order provides for a restricted license for that period. A copy of the order and, after
122 receipt thereof, the restricted license shall be carried at all times by such person while operating a motor
123 vehicle. The court may require a person issued a restricted permit under the provisions of this subsection
124 to be monitored by an alcohol safety action program during the period of license suspension. Any
125 violation of the terms of the restricted license or of any condition set forth by the court related thereto,
126 or any failure to remain drug-free during such period shall be reported forthwith to the court by such
127 program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to
128 this section shall be guilty of a violation of § 46.2-301.

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