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SENATE BILL NO. 1281

Offered January 11, 2017

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A BILL to amend and reenact §§ 18.2-251, 18.2-251.01, 18.2-252, 18.2-254, and 18.2-259.1 of the Code of Virginia, relating to substance abuse treatment upon conviction of a crime; recovery community organization.

Patrons—McDougle; Delegate: Peace

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-251, 18.2-251.01, 18.2-252, 18.2-254, and 18.2-259.1 of the Code of Virginia are amended and reenacted as follows:

§ 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 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; or (iv) a recovery community organization as defined in § 18.2-251.01.

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)~~ (a) to successfully complete treatment or education program or services, ~~(ii)~~ (b) 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)~~ (c) to make reasonable efforts to secure and maintain employment, and ~~(iv)~~ (d) to comply with a plan of at least 100 hours of community service for a felony and up to 24 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 and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall 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 **§ 18.2-251.01. Substance abuse screening and assessment for felony convictions.**

61 A. When a person is convicted of a felony, not a capital offense, committed on or after January 1,
62 2000, he shall be required to undergo a substance abuse screening and, if the screening indicates a
63 substance abuse or dependence problem, an assessment by a certified substance abuse counselor as
64 defined in § 54.1-3500 employed by the Department of Corrections or by an agency employee under the
65 supervision of such counselor. If the person is determined to have a substance abuse problem, the court
66 shall require him to enter treatment and/or education program or services, if available, which, in the
67 opinion of the court, is best suited to the needs of the person. The program or services may be located
68 in the judicial district in which the conviction was had or in any other judicial district as the court may
69 provide. The treatment and/or education program or services shall be licensed by the Department of
70 Behavioral Health and Developmental Services or shall be a similar program or services which are made
71 available through the Department of Corrections if the court imposes a sentence of one year or more or,
72 if the court imposes a sentence of 12 months or less, by a similar program or services available through
73 a local or regional jail, a local community-based probation services agency established pursuant to
74 § 9.1-174, ~~or~~ an ASAP program certified by the Commission on VASAP, *or a recovery community*
75 *organization*. The services agency or program may require the person entering such program or services
76 under the provisions of this section to pay a fee for the education and treatment component, or both,
77 based upon the defendant's ability to pay. *For purposes of this section, "recovery community*
78 *organization" means a nonprofit organization composed of and governed by representatives of local*
79 *communities of addiction recovery that offers peer recovery support services for persons with substance*
80 *abuse and is accredited by the Council on Accreditation of Peer Recovery Support Services.*

81 B. As a condition of any suspended sentence and probation, the court shall order the person to
82 undergo periodic testing and treatment for substance abuse, if available, as the court deems appropriate
83 based upon consideration of the substance abuse assessment.

84 **§ 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing,**
85 **and treatment or education.**

86 The trial judge or court trying the case of any person found guilty of violating any law concerning
87 the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical
88 substances and like substances, shall condition any suspended sentence by first requiring such person to
89 agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic
90 substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be
91 conducted by the supervising probation agency or by personnel of any program or agency approved by
92 the supervising probation agency. The cost of such testing ordered by the court shall be paid by the
93 Commonwealth and taxed as a part of the costs of such criminal proceedings. The judge or court shall
94 order the person, as a condition of any suspended sentence, to undergo such treatment or education for
95 substance abuse, if available, as the judge or court deems appropriate based upon consideration of the
96 substance abuse assessment. The treatment or education shall be provided by a program or agency
97 licensed by the Department of Behavioral Health and Developmental Services, by a similar program or
98 services available through the Department of Corrections if the court imposes a sentence of one year or
99 more or, if the court imposes a sentence of 12 months or less, by a similar program or services available
100 through a local or regional jail, a local community-based probation services agency established pursuant
101 to § 9.1-174, ~~or~~ an ASAP program certified by the Commission on VASAP, *or a recovery community*
102 *organization as defined in § 18.2-251.01.*

103 **§ 18.2-254. Commitment of convicted person for treatment for substance abuse.**

104 A. Whenever any person who has not previously been convicted of any offense under this article or
105 under any statute of the United States or of any state relating to narcotic drugs, marijuana, stimulant,
106 depressant, or hallucinogenic drugs or has not previously had a proceeding against him for violation of
107 such an offense dismissed as provided in § 18.2-251 is found guilty of violating any law concerning the
108 use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances,
109 and like substances, the judge or court shall require such person to undergo a substance abuse screening
110 pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol
111 testing, as may be directed by the court. The cost of such testing ordered by the court shall be paid by
112 the Commonwealth and taxed as a part of the costs of the criminal proceedings. The judge or court shall
113 also order the person to undergo such treatment or education for substance abuse, if available, as the
114 judge or court deems appropriate based upon consideration of the substance abuse assessment. The
115 treatment or education shall be provided by a program or agency licensed by the Department of
116 Behavioral Health and Developmental Services or by a similar program or services available through the
117 Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes
118 a sentence of 12 months or less, by a similar program or services available through a local or regional
119 jail, a local community-based probation services agency established pursuant to § 9.1-174, ~~or~~ an ASAP
120 program certified by the Commission on VASAP, *or a recovery community organization as defined in*

§ 18.2-251.01.

B. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by or closely related to the use of drugs and determined by the court, pursuant to a substance abuse screening and assessment, to be in need of treatment for the use of drugs may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse, licensed by the Department of Behavioral Health and Developmental Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. A charge of escape may be prosecuted in either the jurisdiction where the treatment facility is located or the jurisdiction where the person was sentenced to commitment. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

C. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines, pursuant to a substance abuse screening and assessment, that such defendant is in need of treatment, may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse licensed by the Department of Behavioral Health and Developmental Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

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

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

B. The court trying the case shall order any person so convicted or placed on probation to surrender his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of any such conviction entered and of the license forfeiture to be imposed.

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

182 receipt thereof, the restricted license shall be carried at all times by such person while operating a motor
183 vehicle. The court may require a person issued a restricted permit under the provisions of this subsection
184 to be monitored by an alcohol safety action program *or a recovery community organization as defined*
185 *in § 18.2-251.01* during the period of license suspension. Any violation of the terms of the restricted
186 license or of any condition set forth by the court related thereto, or any failure to remain drug-free
187 during such period shall be reported forthwith to the court by such program. Any person who operates a
188 motor vehicle in violation of any restriction imposed pursuant to this section shall be guilty of a
189 violation of § 46.2-301.