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SENATE BILL NO. 306

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 3, 2020)(Patrons Prior to Substitute—Senators Stanley and Deeds [SB 287])
Senate Amendments in [] - February 11, 2020

A BILL to amend and reenact §§ 4.1-305, 16.1-69.55, and 18.2-251 of the Code of Virginia, relating to destruction of criminal history information for certain charges and convictions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-305, 16.1-69.55, and 18.2-251 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs and services; destruction of criminal history information.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall consume, purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer or his agent when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol. It shall be an affirmative defense to a charge of a violation of this subsection if the defendant shows that such consumption or possession was pursuant to subdivision 7 of § 4.1-200.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle; (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card; or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to consume, purchase or attempt to consume or purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section ~~shall be~~ *is* guilty of a Class 1 misdemeanor; and, upon conviction, (i) such person shall be ordered to pay a mandatory minimum fine of \$500 or ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision and (ii) the license to operate a motor vehicle in the Commonwealth of any such person age 18 or older shall be suspended for a period of not less than six months and not more than one year; the license to operate a motor vehicle in the Commonwealth of any juvenile shall be handled in accordance with the provisions of § 16.1-278.9. The court, in its discretion and upon a demonstration of hardship, may authorize an adult convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection E of § 18.2-271.1 or when referred to a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require an adult who is issued a restricted permit under the provisions of this subsection to be (a) monitored by an alcohol safety action program; or (b) supervised by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. The alcohol safety action program or local community-based probation services agency shall report to the court any violation of the terms of the restricted permit, the required alcohol safety action program monitoring or local community-based probation services and any condition related thereto or any failure to remain alcohol-free during the suspension period.

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any adult who has not previously been convicted of underaged consumption, purchase or possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate

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conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused. If the accused is placed on local community-based probation, the program or services shall be located in any of the judicial districts served by the local community-based probation services agency or in any judicial district ordered by the court when the placement is with an alcohol safety action program. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, (ii) certified by the Commission on VASAP, or (iii) by a program or services made available through a community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. When an offender is ordered to a local community-based probation services rather than the alcohol safety action program, the local community-based probation services agency shall be responsible for providing for services or referring the offender to education or treatment services as a condition of probation.

Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be treated as a conviction for the purpose of applying this section in any subsequent proceedings, *provided that the records from such discharge and dismissal have not been subsequently destroyed pursuant to subsection G or H.*

When any juvenile is found to have committed a violation of subsection A, the disposition of the case shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title 16.1.

G. Any person who has had a charge discharged and dismissed under this section shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to the destruction of the police and court records relating to such charge, and the court that disposed of such charge shall enter an order requiring the destruction of such records, including electronic records, when one year has passed since the date of dismissal and all court costs and fines and all orders of restitution have been satisfied.

H. Notwithstanding the provisions of subsection G, any person charged under this section may file a petition with the court that disposed of such charge for an order of destruction at any time provided that such charge has been discharged and dismissed and all court costs and fines and all orders of restitution have been satisfied. Upon hearing and for good cause shown, the court may enter an order of destruction.

I. Upon the entry of an order of destruction under subsection G or H, the clerk of the court shall cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations adopted pursuant to § 9.1-134, direct the manner by which the appropriate destruction of such records shall be effected.

§ 16.1-69.55. Retention of case records; limitations on enforcement of judgments; extensions.

A. Criminal and traffic infraction proceedings:

1. In misdemeanor and traffic infraction cases, except misdemeanor cases under § 16.1-253.2, 18.2-57.2, or 18.2-60.4, or in cases where an order of destruction has been issued pursuant to § 4.1-305 or 18.2-251, all documents shall be retained for 10 years, including cases sealed in expungement proceedings under § 19.2-392.2. In misdemeanor cases under § 16.1-253.2, 18.2-57.2, or 18.2-60.4, all documents shall be retained for 20 years. In misdemeanor cases under §§ 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, all documents shall be retained for 50 years. *In cases where an order of destruction has been issued pursuant to § 4.1-305 or 18.2-251, the destruction of documents and indices shall be destroyed as provided by those sections.* Documents in misdemeanor and traffic infraction cases for which an appeal has been made shall be returned to and filed with the clerk of the appropriate circuit court pursuant to § 16.1-135;

2. In felony cases that are certified to the grand jury, all documents shall be certified to the clerk of the appropriate circuit court pursuant to §§ 19.2-186 and 19.2-190. All other felony case documents shall be handled as provided in subdivision 1;

3. Dockets and indices shall be retained for 10 years.

B. Civil proceedings:

1. All documents in civil proceedings in district court that are dismissed, including dismissal under § 8.01-335, shall be retained until completion of the Commonwealth's audit of the court records. Notwithstanding § 8.01-275.1, the clerks of the district courts may destroy documents in civil proceedings in which no service of process is had 24 months after the last return date;

2. In civil actions that result in a judgment, all documents in the possession of the general district court shall be retained for 10 years and, unless sooner satisfied, the judgment shall remain in force for a

period of 10 years;

3. In civil cases that are appealed to the circuit court pursuant to § 16.1-112, all documents pertaining thereto shall be transferred to the circuit court in accordance with those sections;

4. The limitations on enforcement of general district court judgments provided in § 16.1-94.1 shall not apply if the plaintiff, prior to the expiration of that period for enforcement, pays the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and docket the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. However, a judgment debtor wishing to discharge a judgment pursuant to the provisions of § 8.01-456, when the judgment creditor cannot be located, may, prior to the expiration of that period for enforcement, pay the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and docket the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. After the expiration of the period provided in § 16.1-94.1, executions on such docketed civil judgments may issue from the general district court wherein the judgment was obtained upon the filing in the general district court of an abstract from the circuit court. In all other respects, the docketing of a general district court judgment in a circuit court confers upon such judgment the same status as if the judgment were a circuit court judgment;

5. Dockets for civil cases shall be retained for 10 years;

6. Indices in civil cases shall be retained for 10 years.

C. Juvenile and domestic relations district court proceedings:

1. In adult criminal cases, all records shall be retained as provided in subdivision A 1;

2. In juvenile cases, all documents and indices shall be governed by the provisions of § 16.1-306;

3. In all cases involving support arising under Title 16.1, 20, or 63.2, all documents and indices shall be retained until the last juvenile involved, if any, has reached 19 years of age and 10 years have elapsed from either dismissal or termination of the case by court order or by operation of law. Financial records in connection with such cases shall be subject to the provisions of § 16.1-69.56;

4. In all cases involving sexually violent offenses, as defined in § 37.2-900, and in all misdemeanor cases under §§ 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, all documents shall be retained for 50 years;

5. In cases transferred to circuit court for trial as an adult or appealed to circuit court, all documents pertaining thereto shall be transferred to circuit court;

6. All dockets in juvenile cases shall be governed by the provisions of subsection F of § 16.1-306.

D. At the direction of the chief judge of a district court, the clerk of that court may cause any or all papers or documents pertaining to civil and criminal cases that have been ended to be destroyed if such records, papers, or documents will no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed or converted to an electronic format. Such microfilm and microphotographic processes and equipment shall meet state archival microfilm standards pursuant to § 42.1-82, or such electronic format shall follow state electronic records guidelines, and such records, papers, or documents so converted shall be placed in conveniently accessible files and provisions made for examining and using the same. The provisions of this subsection shall not apply to the documents for misdemeanor cases under §§ 16.1-253.2, 18.2-57.2, 18.2-60.4, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, which shall be retained as provided in subsection A.

§ 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; destruction of criminal history information.

A. 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. If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.

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

183 services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused
184 based upon consideration of the substance abuse assessment. The program or services may be located in
185 the judicial district in which the charge is brought or in any other judicial district as the court may
186 provide. The services shall be provided by (i) a program licensed by the Department of Behavioral
187 Health and Developmental Services, ~~by~~ or a similar program which is made available through the
188 Department of Corrections, (ii) a local community-based probation services agency established pursuant
189 to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

190 The court shall require the person entering such program under the provisions of this section to pay
191 all or part of the costs of the program, including the costs of the screening, assessment, testing, and
192 treatment, based upon the accused's ability to pay unless the person is determined by the court to be
193 indigent.

194 As a condition of probation, the court shall require the accused (a) to successfully complete treatment
195 or education program or services, (b) to remain drug and alcohol free during the period of probation and
196 submit to such tests during that period as may be necessary and appropriate to determine if the accused
197 is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to
198 comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of
199 community service for a misdemeanor. In addition to any community service required by the court
200 pursuant to clause (d), if the court does not suspend or revoke the accused's license as a term or
201 condition of probation for a violation of § 18.2-250.1, the court shall require the accused to comply with
202 a plan of 50 hours of community service. Such testing shall be conducted by personnel of the
203 supervising probation agency or personnel of any program or agency approved by the supervising
204 probation agency.

205 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
206 otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of
207 court has been provided with the fingerprint identification information or fingerprints of such person, the
208 court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under
209 this section shall be without adjudication of guilt and is a conviction only for the purposes of applying
210 this section in subsequent proceedings, *provided that the records from such discharge and dismissal*
211 *have not been subsequently destroyed pursuant to subsection B or C.*

212 Notwithstanding any other provision of this section, whenever a court places an individual on
213 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
214 for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of
215 those sections shall be imposed. However, if the court places an individual on probation upon terms and
216 conditions for a violation of § 18.2-250.1, such action shall not be treated as a conviction for purposes
217 of § 18.2-259.1 or 46.2-390.1, provided that a court (1) may suspend or revoke an individual's driver's
218 license as a term or condition of probation and (2) shall suspend or revoke an individual's driver's
219 license as a term or condition of probation for a period of six months if the violation of § 18.2-250.1
220 was committed while such person was in operation of a motor vehicle. The provisions of this paragraph
221 shall not be applicable to any offense for which a juvenile has had his license suspended or denied
222 pursuant to § 16.1-278.9 for the same offense.

223 *B. Any person who has had a charge discharged and dismissed under this section shall be entitled,*
224 *in the absence of good cause shown to the contrary by the Commonwealth, to destruction of the police*
225 *and court records relating to such charge, and the court that dismisses such charge shall enter an order*
226 *requiring the destruction of such records, including electronic records, when three years have passed*
227 *since the date of dismissal and all court costs and fines and all orders of restitution have been satisfied.*

228 *C. Notwithstanding the provisions of subsection B, any person who has had a charge discharged and*
229 *dismissed under this section may file a petition with the court that disposed of such charge for an order*
230 *of destruction at any time provided that all court costs and fines and all orders of restitution have been*
231 *satisfied. Upon hearing and for good cause shown, the court may enter an order of destruction.*

232 *D. Upon the entry of an order of destruction under subsection B or C, the clerk of the court shall*
233 *cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to*
234 *rules and regulations adopted pursuant to § 9.1-134, direct the manner by which the appropriate*
235 *destruction of such records shall be effected.*

236 **[2. That the provisions of this act shall not become effective unless an appropriation effectuating**
237 **the purposes of this act is included in a general appropriation act passed in 2020 by the General**
238 **Assembly that becomes law.]**