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## SENATE BILL NO. 69

Offered January 14, 1994

*A BILL to amend and reenact §§ 14.1-135, 16.1-278.9, 18.2-259.1, 18.2-264.1, 19.2-390, 46.2-390.1, and 53.1-150 of the Code of Virginia and to repeal § 18.2-251, relating to first offender program; drug offenses.*

Patrons—Goode; Delegates: Armstrong and Reynolds

Referred to the Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 14.1-135, 16.1-278.9, 18.2-259.1, 18.2-264.1, 19.2-390, 46.2-390.1, and 53.1-150 of the Code of Virginia are amended and reenacted as follows:**

§ 14.1-135. Fees charged to drug offenders.

In each case in a circuit court or a general district court in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the clerk shall assess, in addition to any other fee, a fee of \$50 for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251, and a fee of \$100 for each felony conviction and each felony disposition under § 18.2-251, which shall be included in the taxed costs. The clerk shall pay the fee to the state treasury.

§ 16.1-278.9. (Effective October 1, 1993) Delinquent children; loss of driving privileges for alcohol and drug offenses.

A. If a court has found facts which would justify a finding that a child at least thirteen years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city or town, (ii) a refusal to take a blood or breath test in violation of § 18.2-268.2, (iii) a felony violation of §§ 18.2-248, 18.2-248.1 or § 18.2-250, (iv) a misdemeanor violation of §§ 18.2-248, 18.2-248.1, or § 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful purchase or possession of alcohol in violation of § 4.1-305, (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city or town, or (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below, the court shall order that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person seventeen years of age or younger, the court shall impose the additional fine and order community service as provided in § 18.2-270. If the offense involves a violation designated under clause (i), (ii), or (iii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of seventeen, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of eighteen, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v), or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of sixteen, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following his sixteenth birthday. If the offense involves a violation designated under clause (i), (ii), (v), or (vi), the court shall impose the license sanction without entering a judgment of guilt and shall defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than thirty days, except when the offense involves possession of a concealed handgun or, a striker 12, commonly called a "streetsweeper" or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding twelve shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of sixteen, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following his sixteenth birthday.

B. Any child who has a driver's license at the time of the offense shall be ordered to surrender his driver's license, which shall be held in the physical custody of the court during any period of license denial.

C. The court shall report any order issued under this section to the Department of Motor Vehicles, which shall preserve a record thereof. The report and the record shall include a statement as to whether the child was represented by or waived counsel. Notwithstanding the provisions of Article 12

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60 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to  
61 all law-enforcement officers, attorneys for the Commonwealth and courts. No other record of the  
62 proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an  
63 adjudication of guilt pursuant to subsection F.

64 The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a  
65 driver's license until such time as is stipulated in the court order or until notification by the court of  
66 withdrawal of the order of denial under subsection E.

67 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii), or (vi) of  
68 subsection A, the child may be referred to a certified alcohol safety action program in accordance with  
69 § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child  
70 involves a violation designated under clause (iii), (iv), (v) or (vii) of subsection A, such child may be  
71 referred to appropriate rehabilitative or educational services upon such terms and conditions as the court  
72 may set forth. The court, in its discretion and upon a demonstration of hardship, may authorize the use  
73 of a restricted permit to operate a motor vehicle by any child who has a driver's license at the time of  
74 the offense for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from  
75 school, except that no restricted license shall be issued if the finding as to such child involves a  
76 violation designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent  
77 violation of any offense designated in subsection A. The issuance of the restricted permit shall be set  
78 forth within the court order, a copy of which shall be provided to the child, and shall specifically  
79 enumerate the restrictions imposed and contain such information regarding the child as is reasonably  
80 necessary to identify him. The child may operate a motor vehicle under the court order in accordance  
81 with its terms. Any child who operates a motor vehicle in violation of any restrictions imposed pursuant  
82 to this section shall be guilty of a violation of § 46.2-301.

83 E. Upon petition made at least ninety days after issuance of the order, the court may review and  
84 withdraw any order of denial of a driver's license if for a first such offense. For a second or subsequent  
85 such offense, the order may not be reviewed and withdrawn until one year after its issuance.

86 F. If the finding as to such child involves a violation designated under clause (i), (ii), (v), (vi) or  
87 (vii) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the  
88 child's driver's license has been restored, the court shall or, in the event the violation resulted in the  
89 injury or death of any person, may discharge the child and dismiss the proceedings against him.  
90 Discharge and dismissal under these provisions shall be without an adjudication of guilt but a record of  
91 the proceeding shall be retained for the purpose of applying this section in subsequent proceedings.  
92 Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt. If the  
93 finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the  
94 charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the  
95 provisions of this chapter or § 18.2-251.

96 § 18.2-259.1. Forfeiture of driver's license for violations of article.

97 A. In addition to any other sanction or penalty imposed for a violation of this article, the (i)  
98 judgment of conviction under this article ~~or (ii) placement on probation following deferral of further~~  
99 ~~proceedings under § 18.2-251 for any such offense shall of itself operate to deprive the person so~~  
100 ~~convicted or placed on probation after deferral of proceedings under § 18.2-251 of the privilege to drive~~  
101 ~~or operate a motor vehicle, engine, or train in the Commonwealth for a period of six months from the~~  
102 ~~date of such judgment. Such license forfeiture shall be in addition to and shall run consecutively with~~  
103 ~~any other license suspension, revocation or forfeiture in effect or imposed upon the person so convicted~~  
104 ~~or placed on probation. However, a juvenile who has had his license suspended or denied pursuant to~~  
105 ~~§ 16.1-278.9 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 to surrender  
107 his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the  
108 Department of Motor Vehicles of any such conviction entered and of the license forfeiture to be  
109 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 for whom the court has deferred further  
112 proceedings pursuant to ~~§ 18.2-251~~ be issued a restricted license to operate a motor vehicle for any or  
113 all of the following purposes: (i) travel to and from his place of employment; (ii) travel to a screening,  
114 evaluation and education program entered pursuant to ~~§ 18.2-251~~; (iii) travel during the hours of such  
115 person's employment if the operation of a motor vehicle is a necessary incident of such employment;  
116 (iv) travel to and from school if such person is a student, upon proper written verification to the court  
117 that such person is enrolled in a continuing program of education; or (v) such other medically necessary  
118 travel as the court deems necessary and proper upon written verification of need by a licensed health  
119 professional. No restricted license issued pursuant to this subsection shall permit any person to operate a  
120 commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (~~§ 46.2-341.1 et~~  
121 ~~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 receipt thereof, the restricted license shall be carried at all times by such person while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

§ 18.2-264.1. Charges for forensic laboratory analysis.

In all cases where a person is found guilty of a violation of this article (§ 18.2-247 et seq.), a fee of \$100 per case for any forensic laboratory analysis performed for use in prosecution of such violation shall be taxed as costs to the defendant and shall be paid into the general fund of the state treasury. For the purposes of this section, "guilty" includes any case where the defendant pleads guilty, receives a suspended imposition of sentence or is placed on probation without a judgment of guilt under § 18.2-251.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace and clerks of court to State Police; material submitted by other agencies.

A. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest on any of the following charges:

1. Treason;
2. Any felony;
3. Any offense punishable as a misdemeanor under Title 54.1; or
4. Any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an arrest for a violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, for violation of Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or § 18.2-119 or any similar ordinance of any county, city or town.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau.

For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) after a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; ~~(ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) or~~ (ii) after a verdict of acquittal by reason of insanity pursuant to § 19.2-182.2. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following his conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within seventy-two hours following the receipt of a warrant or capias for the arrest of any person on a charge of a felony, the law-enforcement agency which received the charge shall enter the accused's name and other appropriate information required by the Department of State Police into the information system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The report shall include the person's name, date of birth, social security number and such other known information which the State Police may require.

C. The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency, nolle prosequi, acquittal, or conviction of, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A of this section (ii) any unexecuted criminal process for which a report was made pursuant to subsection B which is ordered destroyed pursuant to § 19.2-76.1 and (iii) any adjudication of delinquency based upon an act which would be a felony if committed by an adult, provided fingerprints and photographs of the juvenile were required to be taken pursuant to subsection A of § 16.1-299. In the case of offenses not required to be reported to the Exchange by subsection A of this section, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record

required to be maintained by § 15.1-135.1. No such report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact, and each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange, any reversal or other amendment to a prior sentence or disposition reported to the Exchange. For each such report made by a clerk of a circuit court, he shall be allowed a fee of fifty cents to be paid from the appropriation for criminal charges.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials responsible for maintaining correctional status information, as required by the rules and regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange.

F. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than thirty days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

G. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term "chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

#### § 46.2-390.1. Required revocation for conviction of drug offenses.

A. Except as otherwise ordered pursuant to § 18.2-259.1, the Commissioner shall forthwith revoke, and not thereafter reissue for six months from the later of (i) the date of conviction ~~or deferral of proceedings under § 18.2-251~~ or (ii) the next date of eligibility to be licensed, the driver's license, registration card, and license plates of any resident or nonresident on receiving notification of (i) his conviction; ~~or~~ (ii) his having been found guilty in the case of a juvenile ~~or (iii) the deferral of further proceedings against him under § 18.2-251~~ for any violation of any provisions of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or of any state or federal law or valid county, city or town ordinance substantially similar to provisions of such Virginia laws. Such license revocation shall be in addition to and shall run consecutively with any other license suspension, revocation or forfeiture in effect against such person.

B. Any person whose license has been revoked pursuant to this section and § 18.2-259.1 shall be subject to the provisions of §§ 46.2-370 and 46.2-414 and shall be required to show proof of financial responsibility and pay a reinstatement fee as provided in § 46.2-411 in order to have his license restored.

§ 53.1-150. Contributions by persons on parole, probation, and work release; delinquency as grounds for revocation of parole or probation; exemptions.

A. Any person (i) who is placed on parole, who is granted suspension of sentence and probation by a court of competent jurisdiction, who is participating in a community diversion program as provided in § 53.1-181, or who is participating in a work release program pursuant to the provisions of § 53.1-60, (ii) who is under the supervision of the Department, which shall include being under the supervision of a court services officer who is employed by the Department and serves a general district court, or of a community diversion program as provided in § 53.1-181, and (iii) who is gainfully employed, shall be required to contribute thirty dollars per month or, if such person is under the supervision of a court services officer of a general district court, then, in the discretion of the court, an amount not to exceed thirty dollars per month, toward the cost of his supervision beginning thirty days from the date he is employed.

Such sums shall be deducted by the parolee, probationer, or participant in a community diversion program from his monthly net earned income and shall be delivered to the Department pursuant to rules and regulations adopted by the Board of Corrections. By prior agreement between an employer and parolee, probationer, or participant in a community diversion program, an employer may deduct thirty dollars from the monthly earned income of the parolee or probationer and remit such amount to the Department pursuant to rules and regulations adopted by the Board of Corrections. In the case of prisoners employed pursuant to § 53.1-60, such sums shall be deducted by the Director from any wages earned by the prisoners. All such funds collected by the Department shall be deposited in the general fund of the state treasury.

245 In the event of more than two months' delinquency in making such contributions by a parolee or  
246 probationer, such delinquency may constitute sufficient grounds for revocation of his parole or  
247 probation. In the event that a probationer or parolee has made timely payments pursuant to this  
248 subsection for a total of sixty months without revocation of his probation or parole or extension of the  
249 length of his probation or parole, then he shall have no further obligation to contribute toward the cost  
250 of his supervision for the offense or offenses for which he was originally placed on probation or parole.

251 B. The Virginia Parole Board may exempt a parolee from the requirements of subsection A on the  
252 grounds of unreasonable hardship, and the sentencing court may exempt a probationer or participant in a  
253 community diversion program from the requirements of subsection A on the grounds of unreasonable  
254 hardship. The Director may exempt a work releasee from the requirements of subsection A on the  
255 grounds of unreasonable hardship. Any parolee or probationer transferred to or from other states under  
256 the supervision of the interstate compact for the supervision of parolees or probationers shall be exempt  
257 from the requirements of subsection A.

258 Any parolee, probationer, participant in a community diversion program or work releasee who is  
259 exempted from the requirements of subsection A and any person specified in subsection A who is not  
260 gainfully employed may be required to perform community service as an alternative to the contribution  
261 toward the cost of his supervision. Any person delinquent in making supervision fee payments may be  
262 required to perform community service in lieu of making outstanding payments. The authority to require  
263 such community service shall be vested in the Virginia Parole Board for parolees, the sentencing court  
264 for probationers and participants in a community diversion program, and the Director for work releasees.  
265 The Board shall promulgate regulations establishing standards for the uniform imposition of such  
266 community service to insure uniform application of any requirement for such community service.

267 C. ~~The provisions of subsection A shall not apply to any person against whom further proceedings~~  
268 ~~have been deferred pursuant to §18.2-251.~~

269 **2. That § 18.2-251 of the Code of Virginia is repealed.**