

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 691

An Act to amend and reenact §§ 15.1-132.1, 18.2-268.3, 18.2-270, 18.2-270.1, 19.2-11.01, 19.2-294.1, 19.2-299, 19.2-368.2, 19.2-389, 46.2-301, 46.2-301.1, 46.2-316, 46.2-341.18, 46.2-341.28, 46.2-351, 46.2-351.2, 46.2-384, 46.2-389, 46.2-391, 46.2-391.2, 46.2-391.4, 46.2-394 and 46.2-395 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-51.4, relating to severe injury of another resulting from driving while intoxicated; penalty.

[H 157]

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-132.1, 18.2-268.3, 18.2-270, 18.2-270.1, 19.2-11.01, 19.2-294.1, 19.2-299, 19.2-368.2, 19.2-389, 46.2-301, 46.2-301.1, 46.2-316, 46.2-341.18, 46.2-341.28, 46.2-351, 46.2-351.2, 46.2-384, 46.2-389, 46.2-391, 46.2-391.2, 46.2-391.4, 46.2-394 and 46.2-395 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-51.4 as follows:

§ 15.1-132.1. Reimbursement of expenses incurred in responding to DUI incident.

Any county, city or town may provide by ordinance that any person who is convicted of a violation of §§ 18.2-51.4, 18.2-266 or § 29.1-738, or a similar ordinance, when his operation of a motor vehicle, engine, train or watercraft while so impaired is the proximate cause of any accident or incident resulting in an appropriate emergency response, may be liable in a separate civil action to the county, city or town or to any volunteer rescue squad, or both, which may provide such emergency response for the expenses thereof, in an amount not to exceed \$1,000 in the aggregate for a particular accident or incident occurring in such county, city or town. As used in this section, "appropriate emergency response" includes all costs of providing law-enforcement, fire-fighting, rescue, and emergency medical services. The provisions of this section shall not preempt or limit any remedy available to the Commonwealth, to the county, city or town, or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving or operation of a vehicle as set forth herein.

§ 18.2-51.4. *Maiming, etc., of another resulting from driving while intoxicated.*

A. Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty of a Class 6 felony.

B. In addition to the penalties otherwise prescribed, the judgment of conviction if for a first offense under this section, shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of one year from the date of such judgment. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2. However, upon conviction and after sentencing of any person for a first offense under this section or any local ordinance substantially similar thereto, if the court finds that the person has not before entered a program pursuant to § 18.2-271.1, the court shall order, as a condition of probation or otherwise, that the person enter and successfully complete an alcohol safety action program, and the provisions of § 18.2-271.1 shall apply *mutatis mutandis*.

If a person is convicted of a violation of this section committed within ten years of a prior offense resulting in a conviction, such person's license or privilege to operate a motor vehicle, engine or train shall be revoked for a period of three years from the date of the judgment of conviction. This revocation period shall be in addition to the suspension period provided under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to this section, in any case, shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26:1 through 46.2-341.26:11.

If a person is convicted of a third or subsequent offense of violating this section within ten years of two other prior offenses resulting in convictions, such person shall not be eligible for participation in a program pursuant to § 18.2-271.1 and shall have his license revoked as provided in subsection B of § 46.2-391. The court trying such case shall order the surrender of the driver's license of the person so convicted, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked indefinitely.

Notwithstanding any other provision of this section, the period of license revocation or suspension shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

C. The provisions of this section shall not apply to, and shall have no effect upon, any

disqualification from operating a commercial motor vehicle imposed under the provisions of the Commercial Driver's License Act (§ 46.2-341.1 et seq.).

For the purpose of this section a "prior offense" means a violation of: (i) the provisions of § 18.2-266, former § 18.1-54 (formerly § 18-75), this section, the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of §§ 18.2-266 through 18.2-269 or this section or (ii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

The provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall apply, mutatis mutandis, upon arrest for a violation of this section.

§ 18.2-268.3. Refusal of tests; procedures.

A. If a person, after having been arrested for a violation of §§ 18.2-51.4, 18.2-266 or § 18.2-266.1 or of a similar ordinance and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this Commonwealth is deemed thereby, as a condition of such operation, to have consented to have samples of his blood and breath taken for chemical tests to determine the alcohol or drug content of his blood, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this Commonwealth, refuses to permit blood or breath or both blood and breath samples to be taken for such tests, the arresting officer shall take the person before a committing magistrate. If he again so refuses after having been further advised by the magistrate of the law requiring blood or breath samples to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Supreme Court, or refuses or fails to so declare in writing and such fact is certified as prescribed below, then no blood or breath samples shall be taken even though he may later request them.

B. The form shall contain a brief statement of the law requiring the taking of blood or breath samples and the penalty for refusal, a declaration of refusal, and lines for the signature of the person from whom the blood or breath sample is sought, the date, and the signature of a witness to the signing. If the person refuses or fails to execute the declaration, the magistrate shall certify such fact and that the magistrate advised the person that a refusal to permit a blood or breath sample to be taken, if found to be unreasonable, constitutes grounds for revocation of the person's privilege to operate a motor vehicle on the highways of this Commonwealth. The magistrate shall promptly issue a warrant or summons charging the person with a violation of § 18.2-268.2. The warrant or summons shall be executed in the same manner as criminal warrants.

C. Venue for the trial of the warrant or summons shall lie in the court of the county or city in which the offense of driving under the influence of intoxicants is to be tried. The executed declaration of refusal or the certificate of the magistrate, as the case may be, shall be attached to the warrant and shall be forwarded by the magistrate to the aforementioned court.

D. When the court receives the declaration or certificate and the warrant or summons charging refusal, the court shall fix a date for the trial of the warrant or summons, at such time as the court designates but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

E. The declaration of refusal or certificate of the magistrate shall be prima facie evidence that the defendant refused to allow a blood or breath sample to be taken to determine the alcohol or drug content of his blood. However, this shall not prohibit the defendant from introducing on his behalf evidence of the basis for his refusal. The court shall determine the reasonableness of such refusal.

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

Any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense committed within a period of five to ten years of a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense committed within ten years of an offense under § 18.2-266 shall be punishable by a fine of not less than \$500 nor more than \$2,500 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to ten years of a first offense.

In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person seventeen years of age or younger shall be (i) fined an additional minimum of \$100 and not more than \$500 and (ii) sentenced to perform forty hours of community service in a program benefitting children or, for a subsequent offense, eighty hours of community service in such a program.

For the purpose of this section a conviction or finding of guilty in the case of a juvenile under the

following shall be considered a prior conviction: (i) the provisions of § 18.2-51.4, § 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, and §§ 18.2-266 through 18.2-269, or (ii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

§ 18.2-270.1. Ignition interlock systems; penalty.

A. For purposes of this section and § 18.2-270.2:

"Commission" means the Commission on VASAP.

"Department" means the Department of Motor Vehicles.

"Ignition interlock system" means a device that (i) connects a motor vehicle ignition system to an analyzer that measures a driver's blood alcohol content; (ii) prevents a motor vehicle ignition from starting if a driver's blood alcohol content exceeds 0.025 percent; and (iii) is equipped with the ability to perform a rolling retest and to electronically log the blood alcohol content during ignition, attempted ignition and rolling retest.

"Rolling retest" means a test of the vehicle operator's blood alcohol content required at random intervals during operation of the vehicle, which triggers the sounding of the horn and flashing of lights if (i) the test indicates that the operator has a blood alcohol content which exceeds 0.025 percent or (ii) the operator fails to take the test.

B. In addition to any other penalty provided by law for conviction of a first or subsequent offense under § 18.2-51.4 or § 18.2-266 or a substantially similar ordinance of any county, city or town, any court of proper jurisdiction may, as a condition of a restricted license, prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for any period of time not to exceed the period of license suspension and restriction. Such condition shall be in addition to any purposes for which a restricted license may be issued pursuant to § 18.2-271.1. The court may order the installation of an ignition interlock system to commence immediately upon conviction. A fee of twenty dollars to cover court and administrative costs related to the ignition interlock system shall be paid by any such offender to the clerk of the court. The court shall require the offender to install an electronic log device with the ignition interlock system on a vehicle designated by the court to measure the blood alcohol content at each attempted ignition and random rolling retest during operation of the vehicle. The offender shall be enrolled in and supervised by an alcohol safety action program pursuant to § 18.2-271.1 and to conditions established by regulation under § 18.2-270.2 by the Commission during the period for which the court has ordered installation of the ignition interlock system. The offender shall be further required to provide to such program, at least quarterly during the period of license restriction, a printout from such electronic log indicating the offender's blood alcohol content during such ignitions, attempted ignitions, and rolling retests, and showing attempts to circumvent or tamper with the equipment.

C. In any case in which the court requires the installation of an ignition interlock system, the court shall direct the offender not to operate any motor vehicle which is not equipped with such a system for a specified period of time not to exceed the period of license suspension and restriction. The clerk of the court shall file with the Department of Motor Vehicles a copy of the order, which shall become a part of the offender's operator's license record maintained by the Department. The Department shall issue to the offender for the installation period required by the court, a restricted license which shall appropriately set forth the restrictions required by the court under this subsection and shall also set forth any exception granted by the court under subsection F.

D. The offender shall be ordered to provide the appropriate ASAP program, within thirty days of the effective date of the order of court, proof of the installation of the ignition interlock system. The Program shall require the offender to have the system monitored and calibrated for proper operation at least every thirty days by an entity approved by the Commission under the provisions of § 18.2-270.2 and to demonstrate proof thereof. The offender shall pay the cost of leasing or buying and monitoring and maintaining the ignition interlock system. Absent good cause shown, the court may revoke the offender's restricted license for failing to (i) timely install such system or (ii) have the system properly monitored and calibrated.

E. No person shall start or attempt to start a motor vehicle equipped with an ignition interlock system for the purpose of providing an operable motor vehicle to a person who is prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock system. No person shall tamper with, or in any way attempt to circumvent the operation of, an ignition interlock system that has been installed in the motor vehicle of a person under this section. Except as authorized in subsection G, no person shall knowingly furnish a motor vehicle not equipped with a functioning ignition interlock system to any person prohibited under subsection B from operating any motor vehicle which is not equipped with such system. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

F. Any person prohibited from operating a motor vehicle under subsection B may, solely in the course of his employment, operate a motor vehicle which is owned or provided by his employer without installation of an ignition interlock system, if the court expressly permits such operation as a condition

of a restricted license. This subsection shall not apply if such employer is an entity wholly or partially owned or controlled by the person otherwise prohibited from operating a vehicle without an ignition interlock system.

G. The Commission shall promulgate such regulations and forms as are necessary to implement the procedures outlined in this section.

§ 19.2-11.01. Crime victim and witness rights.

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by this chapter.

1. Victim and witness protection.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation.

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of Title 19.2 and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of Title 19.2, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

c. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses and telephone numbers in writing.

d. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims.

4. Victim input.

a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding pursuant to the provisions of § 19.2-265.01 unless excluded by the court as a material witness.

5. Courtroom assistance.

a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the conduct of the criminal proceeding.

b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in accordance with §§ 19.2-164 and 19.2-164.1.

c. Victims of certain sexual offenses shall be advised that there may be a closed preliminary hearing in accordance with § 18.2-67.8 and, if a victim is twelve years of age or younger, two-way closed-circuit television may be used in the taking of testimony in accordance with § 18.2-67.9.

B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery in violation of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, *maiming* or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person who is a minor, or (iv) a spouse, parent or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in subdivision (i) of this subsection.

C. Officials and employees of the judiciary, including court services units, law-enforcement agencies, the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness assistance program. Each agency, officer or employee who has a responsibility or responsibilities to victims under this chapter or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that victims and witnesses receive such information and services to which they may be entitled under applicable law, provided that no liability or cause of action shall arise from the failure to make such efforts or from the failure of such victims or witnesses to receive any such information or services.

§ 19.2-294.1. Dismissal of one of dual charges for driving while intoxicated and reckless driving upon conviction of other charge.

Whenever any person is charged with a violation of § 18.2-51.4 or § 18.2-266 or any similar ordinances of any county, city, or town and reckless driving growing out of the same act or acts and is convicted of one of these charges, the court shall dismiss the remaining charge.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court upon a felony charge or upon a charge of assault and battery in violation of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or *maiming* or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, and is adjudged guilty of such charge, the court may, or on the motion of the defendant shall, before imposing sentence direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9-169, of this or any other state or of the United States; and to any agency where the accused is referred for treatment by the court or by probation and parole services, and shall be made available to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.)

of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

§ 19.2-368.2. Definitions.

For the purpose of this chapter:

"Claimant" means the person filing a claim pursuant to this chapter.

"Commission" means the Virginia Workers' Compensation Commission.

"Crime" means an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-51.4 or § 18.2-266.

"Family," when used with reference to a person, means (i) any person related to such person within the third degree of consanguinity or affinity, (ii) any person residing in the same household with such person, or (iii) a spouse.

"Victim" means a person who suffers personal physical injury or death as a direct result of a crime or who suffers personal emotional injury as a direct result of being the subject of a robbery, abduction or attempted robbery or abduction.

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;

2. Such other individuals and agencies which require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government which are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9-169 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) with a volunteer fire company or volunteer rescue squad, (iii) as a court-appointed special advocate, or

(iv) with the Volunteer Emergency Families for Children;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to § 63.1-198.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.);

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.1-173.2, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.1-194.13, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under §§ 18.2-51.4, 18.2-266 or § 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education; and

24. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is

being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.1-135.1.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02 and 32.1-162.9:1.

F. Criminal history information provided to licensed adult care residences, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 63.1-173.2, 63.1-189.1 or § 63.1-194.13.

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.

A. In addition to any other penalty provided by this section, any motor vehicle administratively impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be impounded or immobilized for an additional period of up to ninety days upon conviction of an offender for driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for (i) *a violation of § 18.2-51.4 or driving while intoxicated under the influence* in violation of §§ 18.2-266, 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction or (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2. However, if, at the time of the violation, the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the offender prior to the release of his motor vehicle.

B. Except as provided in §§ 46.2-304 and 46.2-357, no resident or nonresident (i) whose driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who has been directed not to drive by any court, by the Commissioner, or by operation of law pursuant to this title or (iii) who has been forbidden, as prescribed by law, by the Commissioner, the State Corporation Commission, the Commonwealth Transportation Commissioner, any court, or the Superintendent of State Police, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the period of such suspension or revocation has terminated. A clerk's notice of suspension of license for failure to pay fines or costs given in accordance with § 46.2-395 shall be sufficient notice for the purpose of maintaining a conviction under this section. For the purposes of this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.

C. A first offense of violating this section shall constitute a Class 2 misdemeanor. A second or subsequent offense shall constitute a Class 1 misdemeanor. In addition, the court shall suspend the person's license, permit, or privilege to drive for the same period for which it had been previously suspended or revoked when the person violated this section.

D. In the event the person has violated this section by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for an additional period not to exceed ninety days. Any additional suspension ordered under the provisions of this section shall commence upon the expiration of the previous suspension or revocation unless the previous suspension or revocation has expired prior to the ordering of an additional suspension or revocation.

§ 46.2-301.1. Administrative impoundment of motor vehicle for certain driving while license suspended or revoked offenses; judicial impoundment upon conviction; penalty for permitting violation with one's vehicle.

A. The motor vehicle being driven by any person (i) whose driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for *a violation of § 18.2-51.4 or driving while intoxicated under the influence* in violation of §§ 18.2-266, 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction, or (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2, shall be impounded or immobilized by the arresting law-enforcement officer at the time the person is arrested for driving after his driver's license, learner's permit or privilege to drive has been so revoked or suspended. The impoundment or immobilization shall be for a period of thirty days.

The arresting officer, acting on behalf of the Commonwealth, shall serve notice of the impoundment upon the arrested person. The notice shall include information on the person's right to petition for

review of the impoundment pursuant to subsection B. A copy of the notice of impoundment shall be delivered to the magistrate and thereafter promptly forwarded to the clerk of the general district court of the jurisdiction where the arrest was made and to the Commissioner. Transmission of the notice may be by electronic means.

At least five days prior to the expiration of the period of impoundment imposed pursuant to this section or § 46.2-301, the clerk shall provide the offender with information on the location of the motor vehicle and how and when the vehicle will be released.

All reasonable costs of impoundment or immobilization, including removal and storage expenses, shall be paid by the offender prior to the release of his motor vehicle. Notwithstanding the above, where the arresting law-enforcement officer is satisfied that the vehicle was being rented or leased by the arrested driver from a vehicle renting or leasing company that owns the vehicle, the officer shall not be required to impound the vehicle or continue the impoundment and may cause it to be returned to the rental or leasing company that owns the vehicle.

B. Any driver who is the owner of the motor vehicle that is impounded or immobilized under subsection A may, during the period of the impoundment, petition the general district court of the jurisdiction in which the arrest was made to review that impoundment. The court shall review the impoundment within the same time period as the court hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this matter precedence over all other matters on its docket. If the person proves to the court by a preponderance of the evidence that the arresting law-enforcement officer did not have probable cause for the arrest, or that the magistrate did not have probable cause to issue the warrant, the court shall rescind the impoundment. Upon rescission, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or immobilization, including removal or storage costs paid or incurred by him. Otherwise, the court shall affirm the impoundment. If the person requesting the review fails to appear without just cause, his right to review shall be waived.

The court's findings are without prejudice to the person contesting the impoundment or to any other potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings, civil or criminal.

C. The owner or co-owner of any motor vehicle impounded or immobilized under subsection A who was not the driver at the time of the violation, may petition the general district court in the jurisdiction where the violation occurred for the release of his motor vehicle. The motor vehicle shall be released if the owner or co-owner proves by a preponderance of the evidence that he (i) did not know that the offender's driver's license was suspended or revoked when he authorized the offender to drive such motor vehicle or (ii) did not consent to the operation of the motor vehicle by the offender. If the owner proves by a preponderance of the evidence that his immediate family has only one motor vehicle and will suffer a substantial hardship if that motor vehicle is impounded or immobilized for thirty days, the court, in its discretion, may release the vehicle after some period of less than thirty days.

D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge of driving on a suspended or revoked license shall result in an immediate rescission of the impoundment or immobilization provided in subsection A. Upon rescission, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or immobilization, including removal or storage costs, incurred or paid by him.

E. Any person who knowingly authorizes the operation of a motor vehicle by a person he knows has had his driver's license, learner's permit or privilege to drive a motor vehicle suspended or revoked for any of the reasons set forth in subsection A, shall be guilty of a Class 1 misdemeanor.

F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede or infringe upon a valid lienholder's rights to cure a default under an existing security agreement. Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization, including removal or storage expenses which may accrue pursuant to the provisions of this section or § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or immobilization, including removal and storage expenses, to any person or entity providing such services to the Commonwealth, except to the extent such costs or expenses have already been paid by the offender to such person or entity. Such payment shall be made within seven calendar days after a request is made by such person or entity to the Commonwealth for payment. Nothing herein, however, shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such reasonable costs and expenses.

§ 46.2-316. Persons convicted or found not innocent of certain offenses; requirement of proof of financial responsibility for certain offenses.

A. The Department shall not issue a driver's license or learner's permit to any resident or nonresident person while his license or other privilege to drive is suspended or revoked because of his conviction, or finding of not innocent in the case of a juvenile, or forfeiture of bail upon the following charges of offenses committed in violation of either a law of the Commonwealth or a valid local ordinance or of any federal law or law of any other state or any valid local ordinance of any other state:

1. Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle.
2. Perjury, the making of a false affidavit to the Department under any law requiring the registration of motor vehicles or regulating their operation on the highways, or the making of a false statement in any application for a driver's license.

3. Any crime punishable as a felony under the motor vehicle laws or any felony in the commission of which a motor vehicle is used.

4. Violation of the provisions of § 18.2-51.4, *pertaining to maiming while under the influence*, § 18.2-266, pertaining to driving while under the influence of intoxicants or drugs, or of § 18.2-272, pertaining to driving while the driver's license has been forfeited for a conviction, or finding of not innocent in the case of a juvenile, under §§ 18.2-51.4, 18.2-266 or § 18.2-272, or for violation of the provisions of any federal law or law of any other state or any valid local ordinance similar to §§ 18.2-51.4, 18.2-266 or § 18.2-272.

5. Failure of a driver of a motor vehicle, involved in an accident resulting in death or injury to another person, to stop and disclose his identity at the scene of the accident.

6. On a charge of operating or permitting the operation, for the second time, of a passenger automobile for the transportation of passengers for rent or for hire, without having first obtained a license for the privilege as provided in § 46.2-694.

B. The Department shall not issue a driver's license or learner's permit to any person convicted of a crime mentioned in subsection A of this section for a further period of three years after he otherwise becomes entitled to a license or permit until he proves to the Commissioner his ability to respond in damages as provided in Article 15 (§ 46.2-435 et seq.) of Chapter 3 of this title or any other law of the Commonwealth requiring proof of financial responsibility.

§ 46.2-341.18. Disqualification for certain offenses.

A. Except as otherwise provided in this section, the Commissioner shall disqualify for a period of one year any person whose record, as maintained by the Department of Motor Vehicles, shows that he has been convicted of any of the following offenses, if such offense was committed while operating a commercial motor vehicle:

1. A violation of any provision of § 46.2-341.24 or a violation of any federal law or the law of another state substantially similar to § 46.2-341.24;

2. A violation of any provision of § 18.2-51.4 or § 18.2-266 or a violation of a local ordinance paralleling or substantially similar to § 18.2-51.4 or § 18.2-266, or a violation of any federal, state or local law or ordinance substantially similar to § 18.2-51.4 or § 18.2-266;

3. Refusal to submit to a chemical test to determine the alcohol or drug content of the person's blood or breath in accordance with §§ 18.2-268.1 through 18.2-268.12 or this article, or the comparable laws of any other state or jurisdiction;

4. Failure of the driver whose vehicle is involved in an accident which results in the death of or injury to another person, to stop and disclose his identity at the scene of the accident; or

5. Commission of any crime punishable as a felony in the commission of which a motor vehicle is used, other than a felony described in § 46.2-341.19.

B. The Commissioner shall disqualify any such person for a period of three years if the offense listed in subsection A of this section was committed while driving a commercial motor vehicle used in the transportation of hazardous materials required to be placarded under federal Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F).

C. The Commissioner shall disqualify for life any person whose record, as maintained by the Department, shows that he has been convicted of two or more violations of any of the offenses listed in subsection A of this section, if each offense arose from a separate incident. If two or more such disqualification offenses arise from the same incident, the disqualification periods imposed pursuant to subsection A or B of this section shall run consecutively and not concurrently.

D. The Department may issue, if permitted by federal law, regulations establishing guidelines, including conditions, under which a disqualification for life under subsection C may be reduced to a period of not less than ten years.

E. Only offenses committed on or after January 1, 1990, shall be subject to provisions of this section.

§ 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense; prior conviction.

Any person violating any provision of subsection A of § 46.2-341.24 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense committed within less than five years after a first offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense committed within a period of five to ten years of a first offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Any

person convicted of a third offense or subsequent offense committed within ten years of an offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$500 nor more than \$2,500 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to ten years of a first offense.

For the purposes of this section a conviction or finding of not innocent in the case of a juvenile under (i) § 18.2-51.4 or § 18.2-266, (ii) the ordinance of any county, city or town in this Commonwealth substantially similar to the provisions of § 18.2-51.4 or § 18.2-266, (iii) subsection A of § 46.2-341.24, or (iv) the laws of any other state substantially similar to the provisions of §§ 18.2-51.4, 18.2-266 or subsection A of § 46.2-341.24, shall be considered a prior conviction.

§ 46.2-351. Habitual offender defined; petition of certain persons for restoration of privilege of operating motor vehicle.

An habitual offender shall be any resident or nonresident person whose record, as maintained in the office of the Department, shows that he has accumulated the convictions, or findings of not innocent in the case of a juvenile, for separate offenses, committed within a ten-year period, the conviction for which is included in subdivision 1, 2, or 3 as follows:

1. Three or more convictions, or findings of not innocent in the case of a juvenile, singularly or in combination, of the following separate offenses arising out of separate acts:

a. Voluntary or involuntary manslaughter or aggravated involuntary manslaughter resulting from the operation of a motor vehicle;

b. Driving or operating a motor vehicle while under the influence of intoxicants or drugs in violation of § 18.2-266 or subsection A of § 46.2-341.24 *or maiming resulting from driving under the influence of intoxicants or drugs in violation of § 18.2-51.4*;

c. Driving a motor vehicle while his license, permit, or privilege to drive a motor vehicle has been suspended or revoked in violation of §§ 18.2-272, 46.2-301, 46.2-302, or former § 46.1-350 or § 46.1-351;

d. Knowingly making any false affidavit or swearing or affirming falsely to any matter or thing required by the motor vehicle laws or as to information required in the administration of such laws in violation of § 46.2-105;

e. Any offense punishable as a felony under the motor vehicle laws of Virginia or any felony in the commission of which a motor vehicle is used;

f. Failure of the driver of a motor vehicle involved in an accident resulting in the death or injury of any person to stop close to the scene of the accident and report his identity in violation of §§ 46.2-894 through 46.2-899; or

g. Failure of the driver of a motor vehicle involved in an accident resulting only in damage to an attended or unattended vehicle or other property in excess of \$1,000 to stop close to the scene of the accident and report his identity or otherwise report such accident in violation of law.

2. Twelve or more convictions, or findings of not innocent in the case of a juvenile, of separate offenses, singularly or in combination, in the operation of a motor vehicle which are required to be reported to the Department and the commission of which requires the Department or authorizes a court to suspend or revoke the privilege to drive motor vehicles on the highways in the Commonwealth for a period of thirty days or more and the convictions shall include those offenses enumerated in subdivision 1 above when taken with and added to those offenses described herein.

3. The offenses included in subdivisions 1 and 2 of this section shall be deemed to include offenses under any valid county, city, or town ordinance paralleling and substantially conforming to the state statutory provisions cited in subdivisions 1 and 2 of this section and all changes in or amendments thereof, and any federal law, any law of another state or any valid county, city, or town ordinance of another state substantially conforming to the aforesaid state statutory provisions.

Where more than one offense included in subdivision 1, 2 or 3 is committed within a six-hour period, multiple offenses shall, on the first such occasion, be treated for the purposes of this article as one offense provided the person charged has no record of prior offenses chargeable under this article.

§ 46.2-351.2. Summons to show cause to be issued upon conviction of third qualifying offense.

A. Immediately following disposition of any case involving driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266 or a substantially similar local ordinance, or any other offense which qualifies as one which might be used for determination as an habitual offender as set forth in subdivision 1 of § 46.2-351, the court shall review the defendant's Department of Motor Vehicles transcript or abstract of convictions if available. Upon a finding that the person may be within the definition of an habitual offender as set forth in subdivision 1 of § 46.2-351, the court shall forthwith order the issuance of a summons which directs the defendant to appear and show cause why he should not be declared an habitual offender as provided in § 46.2-354. The show cause proceeding shall be held not less than 120 days after the date of the summons. The summons shall be immediately served upon the defendant. Such service shall be deemed adequate notice of the show cause proceeding, and no other notice shall

be required.

B. Notice of the summons shall be transmitted to the Commissioner, along with the abstract of conviction, if any, and the court shall order the Commissioner to certify the person's transcript or abstract of convictions, substantially in the manner provided for in § 46.2-215, for use in the show cause hearing. One copy of such certified transcript or abstract shall be sent to the attorney for the Commonwealth in the jurisdiction of the court issuing the summons and one copy to the court. The Commissioner shall also mail, by first class mail, one copy to the person not less than thirty days prior to the date set in the court order for the show cause proceeding.

C. If the conviction of the third qualifying offense occurs in the general district court and is appealed by the person to the circuit court, the pending show cause proceeding in the general district court shall be stayed until the tenth day following the conviction. If the appeal is not withdrawn within the ten-day period, the show cause proceeding shall be dismissed by the general district court. Upon entry of a final order of conviction of a third qualifying offense by a circuit court, the circuit court shall proceed as otherwise provided in this section.

If the conviction of the third qualifying offense occurs in a circuit court and is appealed by the person, the pending show cause proceeding in the circuit court shall be stayed until such appeal is concluded. Should the person prevail on appeal, the show cause proceeding in the circuit court shall be dismissed, and the clerk of that court shall file with the Department an order of dismissal.

D. The Commissioner shall cause the Department's records to reflect the show cause proceeding and the disposition thereof.

§ 46.2-384. Law-enforcement officers arresting drivers for certain offenses to request abstracts or transcripts of drivers' conviction records.

Every law-enforcement officer who has arrested any person for (i) driving while under the influence of intoxicants or drugs in violation of § 18.2-51.4 or § 18.2-266 or a parallel local ordinance, or § 46.2-341.24, (ii) reckless driving in violation of §§ 46.2-852 through 46.2-865 or a parallel local ordinance, (iii) failure to stop at the scene of an accident in violation of §§ 46.2-894 through 46.2-899 or a parallel local ordinance, or (iv) driving without a license or while his license has been suspended or revoked in violation of § 18.2-51.4 or § 18.2-272, or §§ 46.2-300 through 46.2-302 or a parallel local ordinance or while he is disqualified in violation of § 46.2-341.21 of the Commercial Vehicle Driver's License Act (§ 46.2-341.1 et seq.), shall request from the Department an abstract or transcript of the person's driver's conviction record on file at the Department. The Department shall furnish the abstract or transcript to the attorney for the Commonwealth of the jurisdiction in which the case will be heard, to be held available for the court in which the person is to be tried for the violation or charge. However, the failure of the attorney for the Commonwealth to receive the abstract or transcript in any case shall not constitute grounds for the granting of a continuance of such case. In any such prosecution wherein a necessary element of the offense charged is that the defendant was previously convicted of the same or similar offense, a copy, certified as provided in § 46.2-215, of (1) the abstract of the relevant prior conviction, certified as provided in § 46.2-386, or (2) that portion of the transcript relating to the relevant prior conviction, shall be prima facie evidence of the facts stated therein with respect to the prior offense.

§ 46.2-389. Required revocation for one year upon conviction or finding of guilty of certain offenses; exceptions.

The Commissioner shall forthwith revoke, and not thereafter reissue for one year, except as provided in § 18.2-271 or § 18.2-271.1, the driver's license of any resident or nonresident on receiving a record of his conviction or a record of his having been found guilty in the case of a juvenile of any of the following crimes, committed in violation of a state law or a valid county, city, or town ordinance or law of the United States substantially paralleling and substantially conforming to a like state law and to all changes and amendments of it:

1. Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle;
2. Violation of §§ 18.2-51.4, 18.2-266, 18.2-272, subsection A of § 46.2-341.24 or violation of a valid local ordinance paralleling and substantially conforming to §§ 18.2-51.4, 18.2-266 or § 18.2-272;
3. Perjury or the making of a false affidavit to the Department under this chapter or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways;
4. The making of a false statement to the Department on any application for a driver's license;
5. Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any other felony in the commission of which a motor vehicle is used; or
6. Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death of or injury to another person.

§ 46.2-391. Revocation of license for conviction of driving while under influence of drugs or intoxicants; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 pertaining to (driving a

commercial motor vehicle under the influence of drugs or intoxicants), ~~or of § 18.2-51.4 (maiming committed while driving under the influence of drugs or intoxicants), § 18.2-266 pertaining to (driving under the influence of drugs or intoxicants), or of § 18.2-272 pertaining to (driving while the driver's license has been forfeited for a conviction under § 18.2-266), or on receiving a record of conviction as a second offender for a violation of a federal law or a law of any other state or a valid ordinance of any county, city, or town of the Commonwealth or of any other state similar to subsection A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or intoxicants, or of, §§ 18.2-51.4, 18.2-266 or § 18.2-272, if the subsequent second violation adjudication as a second offender is occurred within ten years from the prior violation. However, if the Commissioner has received a copy of a court order as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court.~~

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person adjudged to be a third offender within a period of ten years in violation of the provisions of subsection A of § 46.2-341.24 ~~pertaining to driving a commercial motor vehicle under the influence of drugs or intoxicants, or of, §§ 18.2-51.4, 18.2-266 pertaining to driving under the influence of drugs or intoxicants or after receiving a record of conviction as a third offender within a period of ten years for , or~~ a violation of federal law or a law of any other state or a valid ordinance of any county, city, or town of the Commonwealth ~~or of any other state similar to subsection A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or intoxicants, or of, §§ 18.2-51.4, 18.2-266 or § 18.2-272.~~ At the expiration of ten years from the date of the revocation hereunder, the person may petition the circuit court in the county or city in which he resides, and for good cause shown, his license may in the discretion of the court be restored on such conditions as the court may prescribe.

C. Any person who has had his driver's license revoked in accordance with subsection B of this section may petition the circuit court of his residence:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of his last conviction. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on whatever conditions the court may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of subsection E of § 18.2-271.1. The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

2. For a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment after the expiration of three years from the date of his last conviction. The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court may prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this subsection, such person shall be given credit for any period his driver's license was revoked under § 46.2-360 after adjudication as an habitual offender.

§ 46.2-391.2. Administrative suspension of license or privilege to operate a motor vehicle.

A. If a breath test is taken pursuant to § 18.2-268.2 or any similar ordinance of any county, city or town and the results show a blood alcohol content of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath, or the person refuses to submit to the breath test in violation of § 18.2-268.3 or any similar local ordinance, and upon issuance of a petition or summons, or upon issuance of a warrant by the magistrate, for a violation of §§ 18.2-51.4, 18.2-266 or § 18.2-268.3, or any similar local ordinance, the person's license shall be suspended immediately for seven days or in the case of (i) an unlicensed person, (ii) a person whose license is otherwise suspended or revoked, or (iii) a person whose driver's license is from a jurisdiction other than the Commonwealth, such person's privilege to operate a motor vehicle in the Commonwealth shall be suspended immediately for seven days.

A law-enforcement officer, acting on behalf of the Commonwealth, shall serve a notice of suspension personally on the arrested person. When notice is served, the arresting officer shall promptly take possession of any driver's license held by the person and issued by the Commonwealth and shall promptly deliver it to the magistrate. Any driver's license taken into possession under this section shall be forwarded promptly by the magistrate to the clerk of the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made together with any petition, summons or warrant, the results of the breath test, if any, and the report required by subsection B. A copy of the notice of suspension shall be forwarded forthwith to both (i) the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made and (ii) the Commissioner. Transmission of this information may be made by electronic means.

The clerk shall promptly return the suspended license to the person at the expiration of the seven-day suspension. Whenever a suspended license is to be returned under this section or § 46.2-391.4, the person may elect to have the license returned in person at the clerk's office or by mail to the address on the person's license or to such other address as he may request.

B. Promptly after arrest and service of the notice of suspension, the arresting officer shall forward to the magistrate a sworn report of the arrest that shall include (i) information which adequately identifies the person arrested and (ii) a statement setting forth the arresting officer's grounds for belief that the person violated § 18.2-51.4 or § 18.2-266 or a similar local ordinance or refused to submit to a breath test in violation of § 18.2-268.3 or a similar local ordinance. The report required by this subsection shall be submitted on forms supplied by the Supreme Court.

C. Any person whose license or privilege to operate a motor vehicle has been suspended under subsection A may, during the period of the suspension, request the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made to review that suspension. The court shall review the suspension within the same time period as the court hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this matter precedence over all other matters on its docket. If the person proves to the court by a preponderance of the evidence that the arresting officer did not have probable cause for the arrest, that the magistrate did not have probable cause to issue the warrant, or that there was not probable cause for issuance of the petition, the court shall rescind the suspension, and the clerk of the court shall forthwith (i) return the suspended license, if any, to the person unless the license has been otherwise suspended or revoked, (ii) deliver to the person a notice that the suspension under § 46.2-391.2 has been rescinded, and (iii) forward to the Commissioner a copy of the notice that the suspension under § 46.2-391.2 has been rescinded. Otherwise, the court shall affirm the suspension. If the person requesting the review fails to appear without just cause, his right to review shall be waived.

The court's findings are without prejudice to the person contesting the suspension or to any other potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings, civil or criminal.

D. If a person whose license or privilege to operate a motor vehicle is suspended under subsection A is convicted under § 18.2-51.4 or § 18.2-266 or any similar local ordinance during the seven-day suspension imposed by subsection A, and if the court decides to issue the person a restricted permit under subsection E of § 18.2-271.1, such restricted permit shall not be issued to the person before the expiration of the seven-day suspension imposed under subsection A.

§ 46.2-391.4. When suspension to be rescinded.

Notwithstanding any other provision of § 46.2-391.2, a subsequent dismissal or acquittal of all the charges under §§ 18.2-51.4, 18.2-266 and 18.2-268.3 or any similar local ordinances, for the same offense for which a person's driver's license or privilege to operate a motor vehicle was suspended under § 46.2-391.2 shall result in the immediate rescission of the suspension. In any such case, the clerk of the court shall forthwith (i) return the suspended license, if any, to the person unless the license has been otherwise suspended or revoked, (ii) deliver to the person a notice that the suspension under § 46.2-391.2 has been rescinded and (iii) forward to the Commissioner a copy of the notice that the suspension under § 46.2-391.2 has been rescinded.

§ 46.2-394. Revocation of license for fourth conviction of certain offenses.

If any person is convicted of a fourth offense as provided in §§ 18.2-51.4, 18.2-266, 46.2-301, 46.2-865, 46.2-894, and 46.2-895 or any similar ordinance of any county, city, or town in Virginia, the

court in which the conviction is held shall revoke his driver's license for five years.

§ 46.2-395. Suspension of license for failure or refusal to pay fines or costs.

A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section, such fines and costs shall be deemed to include any fee assessed by the court under the provisions of § 18.2-271.1 for entry by a person convicted of a violation of § 18.2-51.4 or § 18.2-266 into an alcohol safety action program.

B. In addition to any penalty provided by law, when any person is convicted of any violation of the law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment payments as ordered by the court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways in the Commonwealth. The driver's license of the person shall continue suspended until the fine, costs, forfeiture, restitution, or penalty has been paid in full. If the person has not obtained a license as required by this chapter, or is a nonresident, the court may direct in the judgment of conviction that the person shall not drive any motor vehicle in Virginia for a period to coincide with the nonpayment of the amounts due.

C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued pursuant to § 19.2-354, the clerk of the court that convicted the person shall send or provide the person written notice of the suspension of his license or privilege to drive a motor vehicle in Virginia, effective ten days from the date of conviction, if the fine and costs are not paid prior to the effective date of the suspension as stated on the notice. Notice shall be provided to the person at the time of trial or shall be mailed by first-class mail to the address certified on the summons or bail recognizance document as the person's current mailing address, or to such mailing address as the person has subsequently provided to the court as a change of address. If so mailed on the date of conviction or within two days thereof, or if delivered to the person at the time of trial, such notice shall be adequate notice of the license suspension and of the person's ability to avoid suspension by paying the fines and costs prior to the effective date. No other notice shall be required to make the suspension effective. A record of the person's failure or refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture, restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or on the failure to make a scheduled payment.

D. If the person pays the amounts assessed against him subsequent to the time the license has been transmitted to the Department, and his license is not under suspension or revocation for any other lawful reason, except pursuant to this section, then the Commissioner shall return the license to the person on presentation of the official report of the court evidencing the payment of the fine, costs, forfeiture, restitution, or penalty.

E. If the court has suspended or revoked the driver's license for any lawful reason other than this section, or the conviction is one for which revocation or suspension is required under any provision of this title, except for this section, then the suspension permitted under this section shall be in addition to, and run consecutively with, the revocation or suspension. The period of suspension shall be calculated from the date of the assessment of the fine, costs, forfeiture, restitution, or penalty until the date it has been paid.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.