

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 18.2-251 of the Code of Virginia, relating to first time drug offenders.

[H 2067]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-251 of the Code of Virginia is amended and reenacted as follows:

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

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

As a term or condition, the court ~~may~~ *shall* require the accused to *be evaluated and* enter a ~~screening, evaluation and treatment and/or~~ education program, if available, such as, in the opinion of the court, may be best suited to the needs of the accused. This program may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by a program certified or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The court ~~may~~ *shall* require the person entering such program under the provisions of this section to pay *all or part of* the costs of the program, including the costs of the screening ~~and~~, evaluation, *testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.*

As a condition of probation, the court shall require the accused to remain drug free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug free. Such testing may be conducted by personnel of any ~~screening, evaluation and education~~ program to which the person is referred *or by the supervising agency.* ~~The cost of such testing may be charged to the person in addition to the fee for the education program.~~

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

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

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

ENROLLED

HB2067ER