

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 298

An Act to amend and reenact § 46.2-357 of the Code of Virginia, relating to operation of motor vehicle by habitual offender; penalty.

[H 295]

Approved April 8, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-357 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.

A. It shall be unlawful for any person to drive any motor vehicle or self-propelled machinery or equipment on the highways of the Commonwealth while the revocation of the person's driving privilege remains in effect. However, the revocation determination shall not prohibit the person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

B. Except as provided in subsection D, any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle or self-propelled machinery or equipment in the Commonwealth while the revocation determination is in effect, shall be punished as follows:

1. If such driving does not, of itself, endanger the life, limb, or property of another, such person shall be guilty of a misdemeanor punishable by confinement in jail for no more than ninety days and a fine of not more than \$2,500, either or both. However, ten days of any such confinement shall not be suspended except in cases designated in subdivision 2 (ii) of this subsection.

2. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place while such person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers the life, limb or property of another and one of the offender's underlying convictions is for §§ 18.2-36.1, 18.2-266 or a parallel local ordinance, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months and no portion of such sentence shall be suspended. However, (i) if the sentence is more than one year in a state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, said sentence, or any part thereof may be suspended.

3. If the offense of driving while a determination as an habitual offender is in effect is a second or subsequent such offense, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

C. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle or self-propelled machinery or equipment while his license, permit, or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person has been determined an habitual offender and, by reason of this determination, is barred from driving a motor vehicle or self-propelled machinery or equipment on the highways in the Commonwealth. If the court determines the accused has been determined to be an habitual offender and finds there is probable cause that the alleged offense under this section is a felony, it shall certify the case to the circuit court of its jurisdiction for trial.

D. Notwithstanding the provisions of subdivisions 2 and 3 of subsection B, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant committed to the Department of Corrections for a period not to exceed forty-five days from the date of commitment for evaluation and diagnosis by the Department to determine suitability for participation in an alternative intermediate sanction as specified in §§ 19.2-316.1, 19.2-316.2, or § 19.2-316.3. The evaluation and diagnosis may be conducted by the Department at any state or local correctional facility, probation and parole office, or other location deemed appropriate by the Department. Upon determination that (i) the defendant meets the criteria for such a program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for the confinement of the defendant, the Department shall recommend to the court in writing that the defendant be committed to a Boot Camp Incarceration Program pursuant to § 19.2-316.1, a Detention Center Incarceration Program pursuant to § 19.2-316.2 or a Diversion Center Incarceration Program pursuant to § 19.2-316.3.

Upon receipt of such a recommendation and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following

successful completion of the program, the court shall impose the sentence otherwise authorized by subdivision 2 or 3 of subsection B, but suspend the sentence and place the defendant on probation pursuant to this subsection. Such probation shall be conditioned upon the defendant's entry into and successful completion of the court-ordered program. The court shall order that, upon successful completion of the program, the defendant shall be released from confinement and be under intensive probation supervision for a period to be specified by the court followed by an additional period of regular probation of not less than one year. The court shall further order that the defendant, prior to release from confinement, shall (i) make reasonable efforts to secure and maintain employment, (ii) comply with a plan of restitution or community service, (iii) comply with a plan for payment of fines, if any, and court costs, and (iv) undergo substance abuse treatment, if necessary. The court may impose such other terms and conditions of probation as it deems appropriate.

Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of probation, the court shall cause the defendant to show cause why his probation and suspension of sentence should not be revoked. Upon a finding that the defendant voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of probation, the court may revoke all or part of the probation and suspended sentence, and commit the defendant as otherwise provided, except that the time ~~which the defendant served in the program~~ *by a person sentenced to a Detention Center Incarceration Program or Boot Camp Incarceration Program* shall be credited towards ~~the minimum mandatory portion of the sentence imposed.~~ A person sentenced pursuant to this subsection shall be ordered to pay an amount to be determined by the Board pursuant to regulation to defray the cost of his keep.

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.