

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 891

An Act to amend and reenact §§ 16.1-273, 18.2-251.01, 19.2-299 and 19.2-299.2 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5.3 of Title 2.1 a section numbered 2.1-51.18:3, relating to drug screenings of certain offenders.

[S 1077]

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-273, 18.2-251.01, 19.2-299 and 19.2-299.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5.3 of Title 2.1 a section numbered 2.1-51.18:3 as follows:

§ 2.1-51.18:3. Interagency Drug Offender Screening and Assessment Committee.

The Secretary of Public Safety shall establish and chair an Interagency Drug Offender Screening and Assessment Committee to oversee the drug screening, assessment and treatment provisions of §§ 16.1-273, 18.2-251.01, 19.2-299 and 19.2-299.2 for defendants convicted in the criminal courts of the Commonwealth. The Committee shall include the Directors or Commissioners of the Department of Corrections; Department of Criminal Justice Services; Department of Juvenile Justice; Department of Mental Health, Mental Retardation and Substance Abuse Services; the Virginia Alcohol Safety Action Program; and the Virginia Criminal Sentencing Commission. The Committee shall have as its responsibilities to: (i) assist and monitor agencies in implementing the above-listed sections of the Virginia Code, (ii) ensure quality and consistency in the screening and assessment process, (iii) promote interagency coordination and cooperation in the identification and treatment of drug abusing or drug dependent offenders, (iv) implement an evaluation process and conduct periodic program evaluations and (v) make recommendations to the Governor and General Assembly regarding proposed expenditures from the Drug Assessment Fund. The Committee shall report on the status and effectiveness of offender drug screening, assessment and treatment to the Virginia State Crime Commission and the House Courts of Justice, Senate Courts of Justice, House Appropriations, and Senate Finance Committees by January 1 of each year.

§ 16.1-273. Court may require investigation of social history and preparation of victim impact statement.

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which (i) shall include a drug screening and assessment by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice and (ii) may include the physical, mental and social conditions and personality of the child and the facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated delinquent on the basis of an act committed on or after July 1, 1999 January 1, 2000, which would be a Class 1 or 2 misdemeanor or a felony if committed by an adult, or a violation under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2 misdemeanor if committed by an adult, the court shall require an investigation, which shall include order the juvenile to undergo a drug screening and assessment by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice or by a locally operated court services unit or by an agency employee under the direct supervision of such a counselor.

B. The court also shall, on motion of the attorney for the Commonwealth with the consent of the victim, or may in its discretion, require the preparation of a victim impact statement in accordance with the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant physical, psychological or economic injury as a result of the violation of law.

§ 18.2-251.01. Substance abuse screening and assessment for felony convictions.

A. When a person is convicted of a felony, not a capital offense, committed on or after July 1, 1999 January 1, 2000, he shall be required, as a part of any presentence investigation conducted pursuant to subsection D of § 19.2-299, to undergo a substance abuse screening and, if the screening indicates a substance abuse or dependence problem, an assessment by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Corrections or by an agency employee under the direct supervision of such counselor. If the person is determined to have a substance abuse problem, the

court shall require him to enter a treatment and/or education program, if available, which, in the opinion of the court, is best suited to the needs of the person. This program may be located in the judicial district in which the conviction was had or in any other judicial district as the court may provide. The treatment and/or education program shall be certified or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or shall be a similar program which is made available through the Department of Corrections. The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program *or treatment, including excluding* the costs of the screening, *and* assessment ~~and treatment~~, based upon the person's ability to pay.

B. As a condition of any suspended sentence and probation, the court shall order the person to undergo periodic testing and treatment for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment.

§ 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~~ (i) 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 motion of the defendant shall, or* (ii) *upon a felony charge, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty,* 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.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after ~~July 1, 1999~~ *January 1, 2000*, the defendant shall be required to undergo a substance abuse screening ~~and assessment~~ pursuant to § 18.2-251.01.

§ 19.2-299.2. Alcohol and substance abuse screening and assessment for designated Class 1 misdemeanor convictions.

A. When a person is convicted of (i) any offense committed on or after ~~July 1, 1999~~ *January 1, 2000*, under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2, and such offense is punishable as a Class 1 misdemeanor ~~or~~ (ii) ~~a second or subsequent offense committed on or after July 1, 1998, in violation of § 18.2-266 or an ordinance of a county, city or town which is substantially similar to § 18.2-266, or any combination thereof, within five years of a prior~~

such offense for which he was convicted and the court orders the person to enter an alcohol safety action program pursuant to ~~§ 18.2-271.1~~, the court shall order the person to undergo a substance abuse screening and assessment as part of the sentence if the defendant's sentence includes probation supervision by a community corrections program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1 or participation in a local alcohol safety action program.

The court may order such screening and assessment upon conviction as part of the sentence of any other Class 1 misdemeanor if the defendant's sentence includes probation supervision by a community corrections program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1, participation in a local alcohol safety action program or any other sanction and the court has reason to believe the defendant has a substance abuse or dependence problem.

B. A substance abuse screening and assessment ordered pursuant to this section shall be conducted by the local alcohol safety action program; ~~in conjunction with and pursuant to an agreement with~~ . When an offender is ordered to enter programming under the community corrections program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1, rather than the local alcohol safety action program, the local community corrections program shall be responsible for the screening. However, if a community corrections program has not been established for the locality, the local alcohol safety action program shall conduct the screening and assessment as part of the sentence.

C. If the screening and assessment identifies indicates that the person as having has a substance abuse or dependence problem, an assessment shall be completed and if the assessment confirms that the person has a substance abuse or dependence problem, as a condition of a suspended sentence and probation, the court shall order the person to complete the substance abuse education and intervention component, or both as appropriate, of the local alcohol safety action program or such other treatment program, if available, such as in the opinion of the court would be best suited to the needs of the person. If the referral is to the local alcohol safety action program, the program may charge a fee for the education and intervention component, or both, not to exceed \$300, based upon the defendant's ability to pay.

2. That the Chief Justice of the Supreme Court may designate pilot sites to implement the provisions of this act prior to the effective date of this act. The Interagency Drug Offender Screening and Assessment Committee established pursuant to § 2.1-51.18:3 shall make recommendations to the Chief Justice regarding pilot sites.