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SENATE BILL NO. 969

Offered January 19, 1999

A BILL to amend and reenact §§18.2-251.01, 19.2-299 and 19.2-299.2 of the Code of Virginia, relating to presentence reports; substance abuse screening.

Patron—Reynolds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-251.01, 19.2-299 and 19.2-299.2 of the Code of Virginia are amended and reenacted as follows:

§ 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, he ~~shall~~ *may* 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 assessment. *Any substance abuse screening and assessment ordered under this section shall be performed by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Corrections. 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, including the costs of the screening, assessment and treatment, based upon the person's ability to pay.*

B. As a condition of any suspended sentence and probation, the court ~~shall~~ *may* 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 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, 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

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SB969

60 of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be
61 given the opportunity to submit to the Board a written statement in advance of any parole hearing
62 describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii)
63 to receive copies of such other notifications pertaining to the defendant as the Board may provide
64 pursuant to subsection B of § 53.1-155.

65 C. As part of any presentence investigation conducted pursuant to subsection A, when the offense for
66 which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.)
67 of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant
68 with illicit drug operations or markets.

69 D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense
70 for which the defendant was convicted was a felony, not a capital offense, committed on or after July 1,
71 1999, the defendant ~~shall~~ *may* be required to undergo a substance abuse screening and assessment
72 pursuant to § 18.2-251.01.

73 § 19.2-299.2. Alcohol and substance abuse screening and assessment for designated Class 1
74 misdemeanor convictions.

75 A. When a person is convicted of (i) any offense committed on or after July 1, 1999, under Article 1
76 (§ 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
77 punishable as a Class 1 misdemeanor or (ii) a second or subsequent offense committed on or after July
78 1, 1998, in violation of § 18.2-266 or an ordinance of a county, city or town which is substantially
79 similar to § 18.2-266, or any combination thereof, within five years of a prior such offense for which he
80 was convicted and the court orders the person to enter an alcohol safety action program pursuant to
81 § 18.2-271.1, the court ~~shall~~ *may* order the person to undergo a substance abuse screening and
82 assessment.

83 The court may order such screening and assessment upon conviction of any other Class 1
84 misdemeanor if the court has reason to believe the defendant has a substance abuse or dependence
85 problem.

86 B. A substance abuse screening and assessment ordered pursuant to this section shall be conducted
87 by the local alcohol safety action program, in conjunction with and pursuant to an agreement with the
88 community corrections program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of
89 Title 53.1. However, if a community corrections program has not been established for the locality, the
90 local alcohol safety action program shall conduct the screening and assessment.

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