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SENATE BILL NO. 149

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 13, 2000)

(Patron Prior to Substitute—Senator Stolle)

A BILL to amend and reenact §§ 18.2-270, 18.2-271.1, 19.2-299.2, 46.2-341.28 and 46.2-391 of the Code of Virginia, relating to penalty for driving while intoxicated; subsequent offense; prior conviction.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270, 18.2-271.1, 19.2-299.2, 46.2-341.28 and 46.2-391 of the Code of Virginia is amended and reenacted as follows:

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

Except as otherwise provided herein, 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~~ Five days 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 or subsequent offense committed within ten years of an offense under § 18.2-266 shall be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for ten days that shall not be subject to suspension by the court. Any person convicted of a third offense committed within five years of an offense under § 18.2-266 shall be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for thirty days that shall not be subject to suspension by the court. Upon conviction for a fourth or subsequent offense within ten years, the sentence shall include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part. Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed three years.

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 \$500 and not more than \$1,000 and (ii) sentenced to perform forty hours of community service in a program benefiting 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 § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) 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 (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

§ 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person convicted under law of another state.

A. Any person convicted of a first or second offense of § 18.2-266 (i), (ii), (iii) or (iv), or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. However, upon motion of a person convicted of any such offense following an assessment of the person conducted by an alcohol safety action program, the court, for good cause, may decline to order participation in such a program if the assessment by the alcohol safety action program indicates that treatment is not appropriate for such person. In no event shall such persons be permitted to enter any such program which is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this section and to § 18.2-271.2.

B. The court shall require the person entering such program under the provisions of this section to pay a fee of no less than \$250 but no more than \$300. A reasonable portion of such fee, as may be

60 determined by the Commission on VASAP, but not to exceed ten percent, shall be forwarded monthly to
61 be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance
62 shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon
63 a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to
64 the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention
65 under any such program may be charged.

66 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to
67 the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized
68 by § 18.2-270 or § 46.2-341.28 and the license revocation as authorized by § 18.2-271. Upon a finding
69 that a person so convicted is required to participate in the program described herein, the court shall enter
70 the conviction on the warrant, and shall note that the person so convicted has been referred to such
71 program. The court may then proceed to issue an order in accordance with subsection E of this section,
72 if the court finds that the person so convicted is eligible for a restricted license. If the court finds good
73 cause for a person not to participate in such program or subsequently that such person has violated,
74 without good cause, any of the conditions set forth by the court in entering the program, the court shall
75 dispose of the case as if no program had been entered, in which event the revocation provisions of
76 § 46.2-389 and subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon
77 final disposition of the case, send a copy of its order to the Commissioner of the Department of Motor
78 Vehicles. If such order provides for the issuance of a restricted license, the Commissioner of the
79 Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any
80 such disposition shall be allowed as provided by law. The time within which an appeal may be taken
81 shall be calculated from the date of the final disposition of the case or any motion for rehearing,
82 whichever is later.

83 D. Any person who has been convicted in another state of the violation of a law of such state
84 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose
85 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions
86 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or
87 city in which he resides that he be given probation and assigned to a program as provided in subsection
88 A of this section and that, upon entry into such program, he be issued an order in accordance with
89 subsection E of this section. If the court finds that such person would have qualified therefor if he had
90 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the
91 court may grant the petition and may issue an order in accordance with subsection E of this section as
92 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of
93 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the
94 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by
95 the court, the court shall dispose of the case as if no program had been entered and shall notify the
96 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or
97 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
98 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
99 of the Department of Motor Vehicles.

100 No period of license suspension or revocation shall be imposed pursuant to this subsection which,
101 when considered together with any period of license suspension or revocation previously imposed for the
102 same offense in any state, results in such person's license being suspended for a period in excess of the
103 maximum periods specified in this subsection.

104 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
105 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
106 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
107 person be issued a restricted permit to operate a motor vehicle for any or all of the following purposes:
108 (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation program
109 entered pursuant to this subsection; (iii) travel during the hours of such person's employment if the
110 operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school
111 if such person is a student, upon proper written verification to the court that such person is enrolled in a
112 continuing program of education; (v) such other medically necessary travel as the court deems necessary
113 and proper upon written verification of need by a licensed health professional; or (vi) travel necessary to
114 transport a minor child under the care of such person to and from school, day care, and facilities
115 housing medical service providers. No restricted license issued pursuant to this subsection shall permit
116 any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's
117 License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate
118 a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to
119 the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
120 subsection, which shall specifically enumerate the restrictions imposed and contain such information
121 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.

122 The court shall also provide a copy of its order to the person so convicted who may operate a motor
 123 vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a
 124 restricted license, if the order provides for a restricted license for that time period. A copy of such order
 125 and, after receipt thereof, the restricted license shall be carried at all times while operating a motor
 126 vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to
 127 this section shall be guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon
 128 enrollment within fifteen days in, and successful completion of, a program as described in subsection A
 129 of this section. No restricted license shall be issued during the first four months of a revocation imposed
 130 pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type
 131 described therein committed within ten years of a first such offense. *No restricted license shall be issued*
 132 *during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of*
 133 *§ 46.2-391 for a second offense of the type described therein committed within five years of a first such*
 134 *offense.* No restricted license shall be issued during any revocation period imposed pursuant to
 135 subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding the provisions of § 46.2-411,
 136 the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person whose
 137 privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A
 138 of § 46.2-341.24 or of any ordinance of a county, city or town, or of any federal law or the laws of any
 139 other state similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty
 140 dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in
 141 § 46.2-411, forty dollars shall be transferred to the Commission on VASAP, and twenty-five dollars
 142 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

143 F. The court shall have jurisdiction over any person entering such program under any provision of
 144 this section until such time as the case has been disposed of by either successful completion of the
 145 program, or revocation due to ineligibility or violation of a condition or conditions imposed by the
 146 court, whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause
 147 why the court should not revoke the privilege afforded by this section. Such notice shall be made by
 148 first-class mail to the last known address of such person, and shall direct such person to appear before
 149 the court in response thereto on a date contained in such notice, which shall not be less than ten days
 150 from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be
 151 grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent
 152 forthwith to the Commissioner of the Department of Motor Vehicles.

153 G. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any
 154 gifts or bequests of money or property, and any grant, loan, service, payment or property from any
 155 source, including the federal government, for the purpose of driver alcohol education. Any such gifts,
 156 bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

157 H. The Commission on VASAP, or any county, city, town, or any combination thereof may establish
 158 and, if established, shall operate, in accordance with the standards and criteria required by this
 159 subsection, alcohol safety action programs in connection with highway safety. Each such program shall
 160 operate under the direction of a local independent policy board chosen in accordance with procedures
 161 approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges
 162 who regularly hear or heard cases involving driving under the influence and are familiar with their local
 163 alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish
 164 minimum standards and criteria for the implementation and operation of such programs and shall
 165 establish procedures to certify all such programs to ensure that they meet the minimum standards and
 166 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration
 167 of such programs for public information activities, for accounting procedures, for the auditing
 168 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth
 169 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state
 170 programs and local programs run in conjunction with any county, city or town and costs incurred by the
 171 Commission. The Commission shall submit an annual report as to actions taken at the close of each
 172 calendar year to the Governor and the General Assembly.

173 I. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall
 174 permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a
 175 commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License
 176 Act (§ 46.2-341.1 et seq.).

177 § 19.2-299.2. Alcohol and substance abuse screening and assessment for designated Class 1
 178 misdemeanor convictions.

179 A. When a person is convicted of any offense committed on or after January 1, 2000, under Article
 180 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
 181 is punishable as a Class 1 misdemeanor, the court shall order the person to undergo a substance abuse
 182 screening as part of the sentence if the defendant's sentence includes probation supervision by a

183 community corrections program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of
184 Title 53.1 or participation in a local alcohol safety action program. *Whenever a court requires a person*
185 *to enter into and successfully complete an alcohol safety action program pursuant to § 18.2-271.1 for a*
186 *second offense of the type described therein, or orders an evaluation of a person to be conducted by an*
187 *alcohol safety action program pursuant to any provision of § 46.2-391, the alcohol safety action*
188 *program shall assess such person's degree of alcohol abuse before determining the appropriate level of*
189 *treatment to be provided or to be recommended for such person being evaluated pursuant to § 46.2-391.*

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

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

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

209 § 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense;
210 prior conviction.

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

213 Any person convicted of a second offense committed within less than five years after a first offense
214 under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$200 nor more than
215 \$2,500 and by confinement in jail for not less than one month nor more than one year. ~~Forty-eight~~
216 ~~hours~~ *Five days* of such confinement shall be a mandatory, minimum sentence not subject to suspension
217 by the court. Any person convicted of a second offense committed within a period of five to ten years
218 of a first offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than
219 \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one
220 year. Any person convicted of a third offense or subsequent offense committed within ten years of an
221 offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$500 nor
222 more than \$2,500 and by confinement in jail for not less than two months nor more than one year.
223 Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by
224 the court if the third or subsequent offense occurs within less than five years. Ten days of such
225 confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third
226 or subsequent offense occurs within a period of five to ten years of a first offense.

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

232 § 46.2-391. Revocation of license for conviction of driving while under influence of drugs or
233 intoxicants; exception; petition for restoration of privilege.

234 A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's
235 license of any person on receiving a record of the conviction of any person who is adjudged to be a
236 second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial
237 motor vehicle under the influence of drugs or intoxicants), § 18.2-51.4 (maiming committed while
238 driving under the influence of drugs or intoxicants), § 18.2-266 (driving under the influence of drugs or
239 intoxicants), § 18.2-272 (driving while the driver's license has been forfeited for a conviction under
240 § 18.2-266), or a violation of a federal law or a law of any other state or a valid ordinance of any
241 county, city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4,
242 18.2-266 or § 18.2-272, if the second violation adjudication occurred within ten years from the prior
243 violation. However, if the Commissioner has received a copy of a court order as provided in subsection
244 E of § 18.2-271.1, he shall proceed as provided in the order of the court.

245 B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any
 246 person after receiving a record of the conviction of any person adjudged to be a third offender within a
 247 period of ten years in violation of the provisions of subsection A of § 46.2-341.24, §§ 18.2-51.4,
 248 18.2-266, or a violation of federal law or a law of any other state or a valid ordinance of any county,
 249 city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or
 250 § 18.2-272.

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

253 1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration
 254 of five years from the date of his last conviction. On such petition, and for good cause shown, the court
 255 may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth
 256 on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all
 257 vehicles owned by or registered to him or her, in whole or in part, for a period of at least six months,
 258 and upon whatever other conditions the court may prescribe, subject to the provisions of law relating to
 259 issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of
 260 his previous convictions, the petitioner was addicted to or psychologically dependent on the use of
 261 alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or
 262 psychologically dependent on the use of alcohol or other drugs; and (iii) the defendant does not
 263 constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor
 264 vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person,
 265 *to include an assessment of his degree of alcohol abuse and the appropriate treatment thereof, if any,*
 266 be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be
 267 submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the
 268 issuance of a restricted license for a period not to exceed five years in accordance with the provisions of
 269 § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify the Virginia Alcohol Safety Action
 270 Program which shall during the term of the restricted license monitor the person's compliance with the
 271 terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the
 272 court, and the court may then modify the restrictions or revoke the license.

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

292 ~~In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this~~
 293 ~~subsection, such person shall be given credit for any period his driver's license was revoked under~~
 294 ~~§ 46.2-360 after adjudication as an habitual offender.~~

295 D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i)
 296 while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted
 297 license issued pursuant to subsection C shall, *provided such revocation was based on at least one*
 298 *conviction for an offense committed after July 1, 1999,* be punished as follows:

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

303 2. If such driving of itself endangers the life, limb, or property of another or takes place while such
 304 person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers the life, limb
 305 or property of another and one of the offender's underlying convictions is for § 18.2-36.1, § 18.2-51.4,

306 § 18.2-266 or a parallel local ordinance, such person shall be guilty of a felony punishable by
307 confinement in a state correctional facility for not less than one year nor more than five years or, in the
308 discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve
309 months and no portion of such sentence shall be suspended. However, (i) if the sentence is more than
310 one year in a state correctional facility, any portion of such sentence in excess of one year may be
311 suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme
312 emergency which require such operation to save life or limb, said sentence, or any part thereof may be
313 suspended.

314 3. If any such offense of driving is a second or subsequent violation, such person shall be punished
315 as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers
316 the life, limb, or property of another.

317 E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and
318 prior to imposition of sentence with the consent of the defendant, the court may order the defendant to
319 be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or
320 the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center
321 Incarceration Program pursuant to § 19.2-316.3.

322 *F. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while*
323 *his license is revoked pursuant to subsection A or B, or (ii) in violation of the terms of a restricted*
324 *license issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be*
325 *guilty of a violation of § 18.2-272.*

326 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
327 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
328 **is \$0 in FY 2010.**

329 **3. That the provisions of this act shall be effective October 1, 2000.**