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## HOUSE BILL NO. 67

Offered January 9, 2002

Prefiled December 17, 2001

*A BILL to amend and reenact § 18.2-270 of the Code of Virginia, relating to charging a violation of driving while intoxicated; penalty.*

Patrons—Janis, Albo, Cole, Drake, Kilgore, Moran and Weatherholtz

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 18.2-270 of the Code of Virginia is amended and reenacted as follows:**

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

A. Except as otherwise provided herein provided in subsection C, any person violating any provision of § 18.2-266 shall be is guilty of a Class 1 misdemeanor. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional minimum, mandatory period of five days or, if the level was more than 0.25, for an additional minimum, mandatory period of ten days. The additional minimum, mandatory period of confinement shall not be suspended by the court.

B. 1. Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 where it is alleged in the warrant, information, or indictment on which a person is convicted that such person has been previously convicted of an offense committed within such period shall be punishable punished 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. Five days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court.

2. Any person convicted of a second offense committed within a period of five to ten years of a first offense under § 18.2-266 where it is alleged in the warrant, information, or indictment on which a person is convicted that such person has been previously convicted of an offense committed within such period shall be punishable punished 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.

3. Upon conviction of a second offense within ten years of a first offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional minimum, mandatory period of ten days or, if the level was more than 0.25, for an additional minimum, mandatory period of twenty days. The additional minimum, mandatory period of confinement shall not be suspended by the court.

C. Any person convicted of three or more offenses an offense of § 18.2-266 committed within a ten-year period shall be where it is alleged in the warrant, information, or indictment on which a person is convicted that such person has been previously convicted of such offenses committed twice within a ten-year period is 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 where it is alleged in the warrant, information, or indictment on which a person is convicted that such person has been previously convicted of such offenses committed twice within such period shall be is 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 where it is alleged in the warrant, information, or indictment on which a person is convicted that such person has been previously convicted of such offenses committed three times within such period, 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.

D. 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 that \$1000 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.

E. For the purpose of this section, an adult conviction of any person, 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

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HB67

59 of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or  
60 town in this Commonwealth or the laws of any other state or of the United States substantially similar  
61 to the provisions of § 18.2-51.4, and §§ 18.2-266 through 18.2-269, or (iii) the provisions of subsection  
62 A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

63 *F. If the blood alcohol level of a person convicted hereunder as indicated by the chemical test*  
64 *administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined*  
65 *in jail for an additional minimum, mandatory period of five days or, if the level was more than 0.25, for*  
66 *an additional minimum, mandatory period of ten days. If the blood alcohol level of a person convicted*  
67 *hereunder of a second or subsequent offense within ten years of a first offense, as indicated by the*  
68 *chemical test administered as provided in this article, was at least 0.20, but not more than 0.25, he*  
69 *shall be confined in jail for an additional minimum, mandatory period of ten days or, if the level was*  
70 *more than 0.25, for an additional minimum, mandatory period of twenty days.*

71 *G. Any minimum, mandatory period of confinement imposed pursuant to this section shall not be*  
72 *suspended by the court.*