

992054825

SENATE BILL NO. 841

Offered January 13, 1999

A BILL to amend and reenact §§ 8.01-9, 16.1-77, 18.2-36.1, 18.2-51.4, 18.2-270, 46.2-356, 46.2-357, 46.2-360, 46.2-361, 46.2-362, 46.2-391, 46.2-411 and 53.1-21 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 46.2-355.1, and to repeal §§ 46.2-351 through 46.2-355 of the Code of Virginia, relating to habitual offenders; penalty.

Patrons—Norment, Mims, Reynolds and Stolle; Delegate: Moran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-9, 16.1-77, 18.2-36.1, 18.2-51.4, 18.2-270, 46.2-356, 46.2-357, 46.2-360, 46.2-361, 46.2-362, 46.2-391, 46.2-411 and 53.1-21 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-355.1 as follows:

§ 8.01-9. Guardian ad litem for persons under disability; when guardian ad litem need not be appointed for person under disability.

A. A suit wherein a person under a disability is a party defendant shall not be stayed because of such disability, but the court in which the suit is pending, or the clerk thereof, shall appoint a discreet and competent attorney-at-law as guardian ad litem to such defendant, whether the defendant has been served with process or not. If no such attorney is found willing to act, the court shall appoint some other discreet and proper person as guardian ad litem. Any guardian ad litem so appointed shall not be liable for costs. Every guardian ad litem shall faithfully represent the estate or other interest of the person under a disability for whom he is appointed, and it shall be the duty of the court to see that the interest of the defendant is so represented and protected. Whenever the court is of opinion that the interest of the defendant so requires, it shall remove any guardian ad litem and appoint another in his stead. When, in any case, the court is satisfied that the guardian ad litem has rendered substantial service in representing the interest of the person under a disability, it may allow the guardian reasonable compensation therefor, and his actual expenses, if any, to be paid out of the estate of the defendant. However, if the defendant's estate is inadequate for the purpose of paying compensation and expenses, all, or any part thereof, may be taxed as costs in the proceeding or, in the case of proceedings to adjudicate a person under a disability as an habitual offender pursuant to former § 46.2-351.2 or former § 46.2-352, shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges.

B. Notwithstanding the provisions of subsection A or the provisions of any other law to the contrary, in any suit wherein a person under a disability is a party defendant and is represented by an attorney-at-law duly licensed to practice in this Commonwealth, who shall have entered of record an appearance for such person, no guardian ad litem need be appointed for such person unless the court determines that the interests of justice require such appointment; or unless a statute applicable to such suit expressly requires an answer to be filed by a guardian ad litem. The court may, in its discretion, appoint the attorney of record for the person under a disability as his guardian ad litem, in which event the attorney shall perform all the duties and functions of guardian ad litem.

Any judgment or decree rendered by any court against a person under a disability without a guardian ad litem, but in compliance with the provisions of this subsection B, shall be as valid as if the guardian ad litem had been appointed.

§ 16.1-77. Civil jurisdiction of general district courts.

Except as provided in Article 5 (§ 16.1-122.1 et seq.) of this chapter, each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

(1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person, which would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed \$ 3,000 exclusive of interest and any attorney's fees contracted for in the instrument, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$ 3,000 but does not exceed \$15,000, exclusive of interest and any attorney's fees contracted for in the instrument. However, this \$15,000 limit shall not apply with respect to distress warrants under the provisions of § 55-230.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed \$15,000 exclusive of interest and any attorney's fees contracted for in the instrument.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.)

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60 of Chapter 3 of Title 8.01, and in Chapter 13 (§ 55-217 et seq.) of Title 55, and the maximum
61 jurisdictional limits prescribed in subdivision (1) shall not apply to any claim for damages sustained or
62 rent proved to be owing where the premises were used by the occupant primarily for business,
63 commercial or agricultural purposes.

64 (4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil
65 action or proceeding conferred upon any general district court judge or magistrate under or by virtue of
66 any provisions of the Code of Virginia.

67 (5) Jurisdiction to try and decide suits in interpleader involving personal property where the amount
68 of money or value of the property is not more than the maximum jurisdictional limits of the general
69 district court. The action shall be brought in accordance with the procedures for interpleader as set forth
70 in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions
71 in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading
72 shall be either by motion for judgment or by warrant in debt. The initial pleading shall briefly set forth
73 the circumstances of the claim and shall name as defendant all parties in interest who are not parties
74 plaintiff.

75 (6) Jurisdiction to try and decide any cases pursuant to § 2.1-346 of the Virginia Freedom of
76 Information Act (§ 2.1-340 et seq.), for writs of mandamus or for injunctions.

77 (7) Concurrent jurisdiction with the circuit courts having jurisdiction in such territory to adjudicate
78 habitual offenders pursuant to the provisions of Article 9 (~~§ 46.2-351 et seq.~~) (§ 46.2-355.1 et seq.) of
79 Chapter 3 of Title 46.2.

80 § 18.2-36.1. Certain conduct punishable as involuntary manslaughter.

81 A. Any person who, as a result of driving under the influence in violation of subdivision (ii), (iii), or
82 (iv) of § 18.2-266, unintentionally causes the death of another person, shall be guilty of involuntary
83 manslaughter.

84 B. If, in addition, the conduct of the defendant was so gross, wanton and culpable as to show a
85 reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony
86 punishable by a term of imprisonment of not less than one nor more than twenty years, one year of
87 which shall be a mandatory, minimum term of imprisonment.

88 C. The provisions of this section shall not preclude prosecution under any other homicide statute.
89 The driver's license of any person convicted under this section may be suspended for a period of up to
90 five years. This section shall not preclude any other revocation or suspension required by law.

91 D. *Upon a conviction under subsection A or B of this section, the court shall revoke such person's*
92 *driver's license for an indefinite period. However, upon expiration of three years of the revocation*
93 *period, the person may petition the circuit court of his residence for a restricted license to authorize*
94 *such person to drive a motor vehicle in the Commonwealth in the course of his employment and to and*
95 *from his home to the place of his employment. The court may order that a restricted license for such a*
96 *person be issued in accordance with subsection E of § 18.2-271.1, if the court is satisfied from the*
97 *evidence presented that the defendant does not constitute a threat to the safety and welfare of himself or*
98 *others with regard to the driving of a motor vehicle. The court may prohibit the person to whom the*
99 *restricted license is issued from operating a motor vehicle that is not equipped with a functioning,*
100 *certified ignition interlock system during all or any part of the term for which the restricted license is*
101 *issued in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the*
102 *petition, the court shall order that an evaluation of the person be conducted by the Virginia Alcohol*
103 *Safety Action Program and recommendations therefrom be submitted to the court. The Virginia Alcohol*
104 *Safety Action Program shall during the term of the restricted license monitor the person's compliance*
105 *with the terms of the restrictions imposed by the court. Any violation of such restrictions, or any of the*
106 *conditions set by the court related thereto, shall be reported to the court, and the court shall hold a*
107 *hearing to determine if the license should be revoked. No restricted license issued pursuant to this*
108 *subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia*
109 *Commercial Driver's License Act (§ 46.2-341.1 et seq.). This section shall not prohibit a person from*
110 *operating any farm tractor on the highways when it is necessary to move the tractor from one tract of*
111 *land used for agricultural purposes to another tract of land used for agricultural purposes, provided*
112 *that the distance between the said tracts of land is no more than five miles.*

113 E. *Upon expiration of five years of the revocation period hereunder, such person may petition the*
114 *circuit court of his residence for restoration of his privilege to drive a motor vehicle in the*
115 *Commonwealth. On such petition, and for good cause shown, the court may, in its discretion, restore to*
116 *the person the privilege to drive a motor vehicle in the Commonwealth on whatever conditions the court*
117 *may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is*
118 *satisfied from the evidence presented that the defendant does not constitute a threat to the safety and*
119 *welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on*
120 *the petition, the court shall order that an evaluation of the person be conducted by the Virginia Alcohol*
121 *Safety Action Program and recommendations therefore be submitted to the court.*

F. Any person convicted of driving a motor vehicle or any self propelled machinery or equipment (i) while his license is revoked pursuant to subsection D of this section or (ii) in violation of the terms of a restricted license issued pursuant to such subsection 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, 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 of itself endangers the life, limb, or property of another or 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 subsection A or B of this section, § 18.2-51.4, § 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; no portion of such sentence shall be suspended. However, (i) if the sentence is for 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 an operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, the sentence, or any part thereof, may be suspended.

3. If any such offense of driving is a second or subsequent violation, the 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.

§ 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated.

A. Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty of a Class 6 felony.

B. In addition to the penalties otherwise prescribed, the judgment of conviction if for a first offense under this section, shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of one year from the date of such judgment. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2. However, upon conviction and after sentencing of any person for a first offense under this section or any local ordinance substantially similar thereto, if the court finds that the person has not before entered a program pursuant to § 18.2-271.1, the court shall order, as a condition of probation or otherwise, that the person enter and successfully complete an alcohol safety action program, and the provisions of § 18.2-271.1 shall apply mutatis mutandis.

If a person is convicted of a violation of this section committed within ten years of a prior offense resulting in a conviction, such person's license or privilege to operate a motor vehicle, engine or train shall be revoked for a period of three years from the date of the judgment of conviction. This revocation period shall be in addition to the suspension period provided under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to this section, in any case, shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26:1 through 46.2-341.26:11.

If a person is convicted of a third or subsequent offense of violating this section within ten years of two other prior offenses resulting in convictions, such person shall not be eligible for participation in a program pursuant to § 18.2-271.1 and shall have his license revoked as provided in subsection B of § 46.2-391. The court trying such case shall order the surrender of the driver's license of the person so convicted, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked indefinitely.

B. Upon a conviction under subsection A of this section, the court shall revoke such person's driver's license for an indefinite period. However, upon expiration of three years of the revocation period, the person may petition the circuit court of his residence for a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to and from his home to the place of his employment. The court may order that a restricted license for such a person be issued in accordance with subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. The court may prohibit the person to whom the restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person be conducted by the Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The Virginia Alcohol Safety Action

183 Program shall during the term of the restricted license monitor the person's compliance with the terms
184 of the restrictions imposed by the court. Any violation of such restrictions, or any of the conditions set
185 by the court related thereto, shall be reported to the court, and the court shall hold a hearing to
186 determine if the license should be revoked. No restricted license issued pursuant to this subsection shall
187 permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial
188 Driver's License Act (§ 46.2-341.1 et seq.). This section shall not prohibit a person from operating any
189 farm tractor on the highways when it is necessary to move the tractor from one tract of land used for
190 agricultural purposes to another tract of land used for agricultural purposes, provided that the distance
191 between the said tracts of land is no more than five miles.

192 C. Upon expiration of five years of the revocation period hereunder, such person may petition the
193 circuit court of his residence for restoration of his privilege to drive a motor vehicle in the
194 Commonwealth. On such petition, and for good cause shown, the court may, in its discretion, restore to
195 the person the privilege to drive a motor vehicle in the Commonwealth on whatever conditions the court
196 may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is
197 satisfied from the evidence presented that the defendant does not constitute a threat to the safety and
198 welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on
199 the petition, the court shall order that an evaluation of the person be conducted by the Virginia Alcohol
200 Safety Action Program and recommendations therefore be submitted to the court.

201 D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i)
202 while his license is revoked pursuant to subsection B of this section or (ii) in violation of the terms of a
203 restricted license issued pursuant to such subsection shall be punished as follows:

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

208 2. If such driving of itself endangers the life, limb, or property of another or takes place while such
209 person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers the life, limb
210 or property of another and one of the offender's underlying convictions is for subsection A of this
211 section, § 18.2-36.1, § 18.2-54.1, § 18.2-266 or a parallel local ordinance, such person shall be guilty of
212 a felony punishable by confinement in a state correctional facility for not less than one year nor more
213 than five years or, in the discretion of the jury or the court trying the case without a jury, by
214 confinement in jail for twelve months; no portion of such sentence shall be suspended. However, (i) if
215 the sentence is for more than one year in a state correctional facility, any portion of such sentence in
216 excess of one year may be suspended or (ii) in cases wherein an operation is necessitated in situations
217 of apparent extreme emergency which require such operation to save life or limb, the sentence, or any
218 part thereof, may be suspended.

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

222 E. Notwithstanding any other provision of this section, the period of license revocation or suspension
223 shall not begin to expire until the person convicted has surrendered his license to the court or to the
224 Department of Motor Vehicles.

225 F. The provisions of this section shall not apply to, and shall have no effect upon, any
226 disqualification from operating a commercial motor vehicle imposed under the provisions of the
227 Commercial Driver's License Act (§ 46.2-341.1 et seq.).

228 G. For the purpose of this section a "prior offense" means a violation of: (i) the provisions of
229 § 18.2-266, former § 18.1-54 (formerly § 18-75), this section, the ordinance of any county, city or town
230 in this Commonwealth or the laws of any other state or of the United States substantially similar to the
231 provisions of §§ 18.2-266 through 18.2-269 or this section or (ii) the provisions of subsection A of
232 § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

233 H. The provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall apply, mutatis
234 mutandis, upon arrest for a violation of this section.

235 § 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

236 ~~Any~~ Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be
237 guilty of a Class 1 misdemeanor.

238 Any person convicted of a second offense committed within less than five years after a first offense
239 under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by
240 confinement in jail for not less than one month nor more than one year. Forty-eight hours of such
241 confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any
242 person convicted of a second offense committed within a period of five to ten years of a first offense
243 under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by
244 confinement in jail for not less than one month nor more than one year. Any person convicted of a third

offense or subsequent offense committed within ten years of an offense under § 18.2-266 shall be punishable by a fine of not less than \$500 nor more than \$2,500 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to ten years of a first offense guilty of a Class 6 felony. Upon conviction for such subsequent offenses, the sentence shall include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part.

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 \$100 and not more than \$500 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 § 18.2-51.4, § 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 (ii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

§ 46.2-355.1. *Intervention required for certain offenders; fee; penalty; notice.*

A. Upon receiving notification of a second conviction entered on or after July 1, 1999, for driving while the offender's license, permit or privilege to drive is suspended or revoked in violation of § 46.2-301, the Commissioner shall notify such person that he shall report to a Virginia Alcohol Safety Action Program within sixty days of the date of such notice for intervention. Intervention shall be in accordance with § 18.2-271.1. The program shall provide the Commissioner with information of the offender's compliance.

B. An interview shall be conducted by a representative of a Virginia Alcohol Safety Action Program. The representative shall review all applicable laws with the person attending the interview, provide guidance with respect to budgeting for payment of court fines and cost and explain the habitual offender laws and the consequences of future offenses and may refer the person to any driver improvement clinic. A fee of thirty dollars shall be paid to the Virginia Alcohol Safety Action Program for attendance at a driver intervention interview. All fees collected by a Virginia Alcohol Safety Action Program shall be used to meet their expenses.

C. The Commissioner shall suspend the driving privilege of any person who fails to complete and pay the required fee for an intervention interview within the sixty-day period. The suspension shall continue until such time as the person has completed and paid for the intervention interview.

D. Notice to report for intervention shall be sent by the Department by certified mail, return receipt requested, to the driver at the last known address supplied by the driver and on file with the Department.

E. Failure of the offender to attend as required or failure of the Department to notify the offender upon the second offense shall not prevent conviction of any subsequent offense committed in violation of § 46.2-301.

§ 46.2-356. Period during which habitual offender not to be licensed to drive motor vehicle.

No license to drive motor vehicles in Virginia shall be issued to any person determined or adjudicated an habitual offender (i) for a period of ten years from the date of any final order of a court entered under this article or if no such order was entered then the notice of the determination by the Commissioner finding the person to be an habitual offender and (ii) until the privilege of the person to drive a motor vehicle in the Commonwealth has been restored by an order of a court entered in a proceeding as provided in this article.

§ 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 determined or adjudicated an habitual offender 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 of itself endangers the life, limb, or property of another or 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 served by a person sentenced to a Detention Center Incarceration Program or Boot Camp Incarceration Program shall be credited towards 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.

§ 46.2-360. Restoration of privilege of operating motor vehicle; restoration of privilege to persons convicted under certain other provisions of Habitual Offender Act.

Any person who has been found to be an habitual offender where the determination or adjudication was based in part and dependent on a conviction as set out in subdivision 1 b of *former* § 46.2-351, may petition the court in which he was found to be an habitual offender, or the circuit court in the political subdivision in which he then resides to:

1. Restore his privilege to drive a motor vehicle in the Commonwealth, provided that five years have elapsed from the date of the final order of a court entered under this article, or if no such order was entered then the notice of the determination by the Commissioner. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on whatever conditions the court may prescribe, subject to other provisions of law relating to the issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drug; and (iii) the person does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of subsection E of § 18.2-271.1. The local Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

2. Issue a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment, to and from his home to the place of his employment or such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed physician, provided that three years have elapsed from the date of the final order, or if no such order was entered then the notice of the determination by the Commissioner. The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs, (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drugs, and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court may prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The local Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this section, such person shall be given credit for any period his driver's license was administratively revoked under § 46.2-391 prior to the final order or notification by the Commissioner of the habitual offender determination.

A copy of any petition filed hereunder shall be served on the attorney for the Commonwealth for the jurisdiction wherein the petition was filed, and shall also be served on the Commissioner of the Department of Motor Vehicles, who shall provide to the attorney for the Commonwealth a certified copy of the petitioner's driving record. The Commissioner shall also advise the attorney for the Commonwealth whether there is anything in the records maintained by the Department that might make the petitioner ineligible for restoration, and may also provide notice of any potential ineligibility to the Attorney General's Office, which may join in representing the interests of the Commonwealth where it appears that the petitioner is not eligible for restoration. The hearing on a petition filed pursuant to this article shall not be set for a date sooner than thirty days after the petition is filed and served as provided herein. The court may order that the petitioner be evaluated by a Virginia Alcohol Safety Action Program and that the results of the evaluation be made available to the court prior to the hearing date.

§ 46.2-361. Restoration of privilege after driving while license revoked or suspended for failure to

429 pay fines or costs or furnish proof of financial responsibility.

430 A. Any person who has been found to be an habitual offender, where the determination or
431 adjudication was based in part and dependent on a conviction as set out in subdivision 1 c of § *former*
432 46.2-351, may, after three years from the date of the final order of a court entered under this article, or
433 if no such order was entered then the notice of the determination or adjudication by the Commissioner,
434 petition the court in which he was found to be an habitual offender, or the circuit court in the political
435 subdivision in which he then resides, for restoration of his privilege to drive a motor vehicle in the
436 Commonwealth. In no event, however, shall the provisions of this subsection apply when such person's
437 determination or adjudication was also based in part and dependent on a conviction as set out in
438 subdivision 1 b of *former* § 46.2-351. In such case license restoration shall be in compliance with the
439 provisions of § 46.2-360.

440 B. Any person who has been found to be an habitual offender, where the determination or
441 adjudication was based entirely upon convictions as set out in subdivision 1 c of *former* § 46.2-351,
442 may, after payment in full of all outstanding fines, costs and judgments relating to his determination,
443 and furnishing proof of financial responsibility, if applicable, petition the court in which he was found to
444 be an habitual offender, or the circuit court in the political subdivision in which he then resides, for
445 restoration of his privilege to drive a motor vehicle in the Commonwealth.

446 C. This section shall apply only where the conviction or convictions as set out in subdivision 1 c of
447 *former* § 46.2-351 resulted from a suspension or revocation ordered pursuant to (i) § 46.2-395 for failure
448 to pay fines and costs, (ii) § 46.2-459 for failure to furnish proof of financial responsibility, or (iii)
449 § 46.2-417 for failure to satisfy a judgment, provided the judgment has been paid in full prior to the
450 time of filing the petition or was a conviction under § 46.2-302 or *former* § 46.1-351.

451 D. On any such petition, the court, in its discretion, may restore to the person his privilege to drive a
452 motor vehicle, on whatever conditions the court may prescribe, if the court is satisfied from the evidence
453 presented that the petitioner does not constitute a threat to the safety and welfare of himself or others
454 with respect to the operation of a motor vehicle, and that he has satisfied in full all outstanding court
455 costs, court fines and judgments relating to determination as an habitual offender and furnished proof of
456 financial responsibility, if applicable.

457 E. A copy of any petition filed hereunder shall be served on the attorney for the Commonwealth for
458 the jurisdiction wherein the petition was filed, and shall also be served on the Commissioner of the
459 Department of Motor Vehicles, who shall provide to the attorney for the Commonwealth a certified copy
460 of the petitioner's driving record. The Commissioner shall also advise the attorney for the
461 Commonwealth whether there is anything in the records maintained by the Department that might make
462 the petitioner ineligible for restoration, and may also provide notice of any potential ineligibility to the
463 Attorney General's Office, which may join in representing the interests of the Commonwealth where it
464 appears that the petitioner is not eligible for restoration. The hearing on a petition filed pursuant to this
465 article shall not be set for a date sooner than thirty days after the petition is filed and served as provided
466 herein.

467 § 46.2-362. Appeals.

468 An appeal to the circuit court may be taken from any final action or order of the general district
469 court under *former* § 46.2-355 in the same manner and form as provided in §§ 16.1-106 and 16.1-107.
470 An appeal to the Court of Appeals may be taken from any final action or order of a circuit court
471 entered under this article in the same manner and form as such an appeal would be taken in any
472 criminal case.

473 § 46.2-391. Revocation of license for conviction of driving while under influence of drugs or
474 intoxicants; exception; petition for restoration of privilege.

475 A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's
476 license of any person on receiving a record of the conviction of any person who is adjudged to be a
477 second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial
478 motor vehicle under the influence of drugs or intoxicants), § 18.2-51.4 (maiming committed while
479 driving under the influence of drugs or intoxicants), § 18.2-266 (driving under the influence of drugs or
480 intoxicants), § 18.2-272 (driving while the driver's license has been forfeited for a conviction under
481 § 18.2-266), or a violation of a federal law or a law of any other state or a valid ordinance of any
482 county, city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4,
483 18.2-266 or § 18.2-272, if the second violation adjudication occurred within ten years from the prior
484 violation. However, if the Commissioner has received a copy of a court order as provided in subsection
485 E of § 18.2-271.1, he shall proceed as provided in the order of the court.

486 B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any
487 person after receiving a record of the conviction of any person adjudged to be a third offender within a
488 period of ten years in violation of the provisions of subsection A of § 46.2-341.24, §§ 18.2-51.4,
489 18.2-266, or a violation of federal law or a law of any other state or a valid ordinance of any county,
490 city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or

§ 18.2-272. At the expiration of ten years from the date of the revocation hereunder, the person may petition the circuit court in the county or city in which he resides, and for good cause shown, his license may in the discretion of the court be restored on such conditions as the court may prescribe.

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

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of his last conviction. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on whatever conditions the court may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of subsection E of § 18.2-271.1. The court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

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

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

D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted license issued pursuant to subsection C 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 of itself endangers the life, limb, or property of another or 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, § 18.2-54.1, § 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 any such offense of driving is a second or subsequent violation, 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.*

§ 46.2-411. Reinstatement of suspended or revoked license or other privilege to operate or register a motor vehicle; proof of financial responsibility; reinstatement fee.

The Commissioner may refuse, after a hearing if demanded, to issue to any person whose license has been suspended or revoked any new or renewal license, or to register any motor vehicle in the name of the person, whenever he deems or in case of a hearing finds it necessary for the safety of the public on the highways in the Commonwealth.

Before granting or restoring a license or registration to any person whose driver's license or other privilege to drive motor vehicles or privilege to register a motor vehicle has been revoked or suspended pursuant to §§ 46.2-389, 46.2-391, 46.2-391.1 or § 46.2-417, the Commissioner shall require proof of financial responsibility in the future as provided in Article 15 (§ 46.2-435 et seq.) of this chapter, but no person shall be licensed who may not be licensed under the provisions of §§ 46.2-389 through 46.2-431.

Whenever the driver's license or registration cards, license plates and decals, or other privilege to drive or to register motor vehicles of any resident or nonresident person is suspended or revoked by the Commissioner or by a district court or circuit court pursuant to the provisions of Title 18.2 or this title, or any valid local ordinance, the order of suspension or revocation shall remain in effect and the driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall not be reinstated and no new driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall be issued or granted unless such person, in addition to complying with all other provisions of law, pays to the Commissioner a reinstatement fee of thirty dollars. The reinstatement fee shall be increased by thirty dollars whenever such suspension or revocation results from conviction of involuntary manslaughter in violation of § 18.2-36.1; conviction of maiming resulting from driving while intoxicated in violation of § 18.2-51.4; conviction of driving while intoxicated in violation of § 18.2-266 or § 46.2-341.24; conviction of driving after illegally consuming alcohol in violation of § 18.2-266.1 or failure to comply with court imposed conditions pursuant to subsection D of § 18.2-271.1; unreasonable refusal to submit to drug or alcohol testing in violation of § 18.2-268.2; conviction of driving while a license, permit or privilege to drive was suspended or revoked in violation of § 46.2-301 or § 46.2-341.21; disqualification pursuant to § 46.2-341.20; violation of driver's license probation pursuant to § 46.2-499; failure to attend a driver improvement clinic pursuant to § 46.2-503 or habitual offender interventions pursuant to *former* § 46.2-351.1; conviction of eluding police in violation of § 46.2-817; conviction of hit and run in violation of § 46.2-894; conviction of reckless driving in violation of Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 or a conviction, finding or adjudication under any similar local ordinance, federal law or law of any other state. Five dollars of the additional amount shall be retained by the Department as provided in this section and twenty-five dollars shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund established pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1. When three years have elapsed from the termination date of the order of suspension or revocation and the person has complied with all other provisions of law, the Commissioner may relieve him of paying the reinstatement fee.

No reinstatement fee shall be required when the suspension or revocation of license results from the person's suffering from mental or physical infirmities or disabilities from natural causes not related to the use of self-administered intoxicants or drugs. No reinstatement fee shall be collected from any person whose license is suspended by a court of competent jurisdiction for any reason, other than a cause for mandatory suspension as provided in this title, provided the court ordering the suspension is not required by § 46.2-398 to forward the license to the Department during the suspended period.

Except as otherwise provided in this section and § 18.2-271.1, reinstatement fees collected under the provisions of this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.

§ 53.1-21. Transfer of prisoners into and between state and local correctional facilities.

A. Any person who (1) is accused or convicted of an offense (a) in violation of any county, city or town ordinance within the Commonwealth, (b) against the laws of the Commonwealth or (c) against the laws of any other state or country, or (2) is a witness held in any case in which the Commonwealth is a party and who is confined in a state or local correctional facility, may be transferred by the Director, subject to the provisions of § 53.1-20, to any other state or local correctional facility which he may designate.

B. The following limitations shall apply to the transfer of persons into the custody of the Department:

1. No person convicted of violating § 20-61 shall be committed or transferred to the custody of the Department.

2. No person who is convicted of any violation pursuant to Article 9 (~~§ 46.2-351 et seq.~~)

614 (§ 46.2-355.1 *et seq.*) of Chapter 3 of Title 46.2 shall be committed or transferred to the custody of the
615 Department without the consent of the Director.

616 3. No person who is convicted of a misdemeanor or a felony and receives a jail sentence of twelve
617 months or less shall be committed or transferred to the custody of the Department without the consent
618 of the Director.

619 4. Beginning July 1, 1991, and subject to the provisions of § 53.1-20, no person, whether convicted
620 of a felony or misdemeanor, shall be transferred to the custody of the Department when the combined
621 length of all sentences to be served totals two years or less, without the consent of the Director.

622 **2. That §§ 46.2-351 through 46.2-355 of the Code of Virginia are repealed.**

623 **3. That the provisions of this act may result in a net increase in periods of imprisonment in state**
624 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
625 **is \$1,770,250 in FY 2004.**