

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 16.1-278.9 of the Code of Virginia, relating to delinquent children; loss of*
 3 *driving privileges for alcohol, firearm, and drug offenses; truancy.*

4 [S 146]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 16.1-278.9 of the Code of Virginia is amended and reenacted as follows:**8 **§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm, and drug offenses;**
 9 **truancy.**

10 A. If a court has found facts which would justify a finding that a child at least 13 years of age at the time
 11 of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of
 12 any county, city, or town; (ii) a refusal to take a breath test in violation of § 18.2-268.2; (iii) a felony violation
 13 of Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248, 18.2-248.1, or 18.2-250; (iv) a misdemeanor
 14 violation of Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248, 18.2-248.1, or 18.2-250; (v) the
 15 unlawful purchase, possession, or consumption of alcohol in violation of § 4.1-305 or the unlawful drinking
 16 or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309; (vi) public
 17 intoxication in violation of § 18.2-388 or a similar ordinance of a county, city, or town; (vii) the unlawful use
 18 or possession of a handgun or possession of a "streetsweeper" as defined below; or (viii) a violation of
 19 § 18.2-83, the court shall order, in addition to any other penalty that it may impose as provided by law for the
 20 offense, that the child be denied a driver's license. In addition to any other penalty authorized by this section,
 21 if the offense involves a violation designated under clause (i) and the child was transporting a person 17 years
 22 of age or younger, the court shall impose the additional fine and order community service as provided in
 23 § 18.2-270. If the offense involves a violation designated under clause (i), (ii), (iii), or (viii), the denial of a
 24 driver's license shall be for a period of one year or until the juvenile reaches the age of 17, whichever is
 25 longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18,
 26 whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated
 27 under clause (iv), (v), or (vi) the denial of driving privileges shall be for a period of six months unless the
 28 offense is committed by a child under the age of 16 years and three months, in which case the child's ability
 29 to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age
 30 of 16 and three months. If the offense involves a first violation designated under clause (v) or (vi), the court
 31 shall impose the license sanction and may enter a judgment of guilt or, without entering a judgment of guilt,
 32 may defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to
 33 subsection F. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose
 34 the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or
 35 § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges
 36 shall be for a period of not less than 30 days, except when the offense involves possession of a concealed
 37 handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of
 38 like kind with a spring tension drum magazine capable of holding 12 shotgun shells, in which case the denial
 39 of driving privileges shall be for a period of two years unless the offense is committed by a child under the
 40 age of 16 years and three months, in which event the child's ability to apply for a driver's license shall be
 41 delayed for a period of two years following the date he reaches the age of 16 and three months.

42 A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance and
 43 meeting requirements as provided in § 22.1-258, the court ~~shall~~ *may* order the denial of the child's driving
 44 privileges for a period of not less than 30 days. If such failure to comply involves a child under the age of 16
 45 years and three months, the child's ability to apply for a driver's license ~~shall~~ *may* be delayed for a period of
 46 not less than 30 days following the date he reaches the age of 16 and three months.

47 If the court finds a second or subsequent such offense, it may order the denial of a driver's license for a
 48 period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the child's ability
 49 to apply for a driver's license for a period of one year following the date he reaches the age of 16 and three
 50 months, as may be appropriate.

51 A2. If a court finds that a child at least 13 years of age has refused to take a blood test in violation of
 52 § 18.2-268.2, the court shall order that the child be denied a driver's license for a period of one year or until
 53 the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or
 54 until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense.

55 B. Any child who has a driver's license at the time of the offense or at the time of the court's finding as
 56 provided in subsection A1 or A2 shall be ordered to surrender his driver's license *if the court has ordered the*

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57 *denial of the child's driving privileges*, which shall be held in the physical custody of the court during any
58 period of license denial.

59 C. The court shall report any order issued under this section to the Department of Motor Vehicles, which
60 shall preserve a record thereof. The report and the record shall include a statement as to whether the child was
61 represented by or waived counsel or whether the order was issued pursuant to subsection A1 or A2.
62 Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) or the provisions of Title 46.2, this record
63 shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. No other
64 record of the proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding
65 results in an adjudication of guilt pursuant to subsection F.

66 The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a driver's
67 license until such time as is stipulated in the court order or until notification by the court of withdrawal of the
68 order of denial under subsection E.

69 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of
70 subsection A or a violation designated under subsection A2, the child may be referred to a certified alcohol
71 safety action program in accordance with § 18.2-271.1 upon such terms and conditions as the court may set
72 forth. If the finding as to such child involves a violation designated under clause (iii), (iv), (v), (vii) or (viii)
73 of subsection A, such child may be referred to appropriate rehabilitative or educational services upon such
74 terms and conditions as the court may set forth.

75 The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted
76 permit to operate a motor vehicle by any child who has a driver's license at the time of the offense or at the
77 time of the court's finding as provided in subsection A1 or A2 for any of the purposes set forth in subsection
78 E of § 18.2-271.1 or for travel to and from school, except that no restricted license shall be issued for travel to
79 and from home and school when school-provided transportation is available and no restricted license shall be
80 issued if the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A,
81 or if it involves a second or subsequent violation of any offense designated in subsection A, a second finding
82 by the court of failure to comply with school attendance and meeting requirements as provided in subsection
83 A1, or a second or subsequent finding by the court of a refusal to take a blood test as provided in subsection
84 A2. The issuance of the restricted permit shall be set forth within the court order, a copy of which shall be
85 provided to the child, and shall specifically enumerate the restrictions imposed and contain such information
86 regarding the child as is reasonably necessary to identify him. The child may operate a motor vehicle under
87 the court order in accordance with its terms. Any child who operates a motor vehicle in violation of any
88 restrictions imposed pursuant to this section is guilty of a violation of § 46.2-301.

89 E. Upon petition made at least 90 days after issuance of the order, the court may review and withdraw any
90 order of denial of a driver's license if for a first such offense or finding as provided in subsection A1 or A2.
91 For a second or subsequent such offense or finding, the order may not be reviewed and withdrawn until one
92 year after its issuance.

93 F. If the finding as to such child involves a first violation designated under clause (vii) of subsection A,
94 upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's license has
95 been restored, the court shall or, in the event the violation resulted in the injury or death of any person or if
96 the finding involves a violation designated under clause (i), (ii), (v), or (vi) of subsection A, may discharge
97 the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be
98 without an adjudication of guilt but a record of the proceeding shall be retained for the purpose of applying
99 this section in subsequent proceedings. Failure of the child to fulfill such terms and conditions shall result in
100 an adjudication of guilt. If the finding as to such child involves a violation designated under clause (iii) or (iv)
101 of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of
102 pursuant to the provisions of this chapter or § 18.2-251. If the finding as to such child involves a second
103 violation under clause (v), (vi) or (vii) of subsection A, the charge shall not be dismissed pursuant to this
104 subsection but shall be disposed of under § 16.1-278.8.