

**REPORT OF THE
JOINT SUBCOMMITTEE TO STUDY THE
VIRGINIA ALCOHOL SAFETY ACTION PROGRAM
OF THE
SENATE COMMITTEE ON REHABILITATION AND SOCIAL SERVICES
AND THE
HOUSE COMMITTEE ON HEALTH, WELFARE AND INSTITUTIONS
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**

HOUSE DOCUMENT NO. 27

**COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
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Report of the
Joint Subcommittee to Study the
Virginia Alcohol Safety Action Program
of the
Senate Committee on Rehabilitation and Social Services
and the
House Committee on Health, Welfare and Institutions
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1979

To: Honorable John N. Dalton, Governor of Virginia

and

The General Assembly of Virginia

INTRODUCTION

The Joint Subcommittee to Study the Virginia Alcohol Safety Action Program was authorized to conduct its study by House Joint Resolution No. 136 agreed to by the House of Delegates and Senate of Virginia during the 1978 Session. That resolution is as follows:

HOUSE JOINT RESOLUTION NO. 136

Requesting the House of Delegates Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services to appoint a joint subcommittee to study the major issues affecting the Highway Safety Division and the Department of Mental Health and Mental Retardation as they relate to Virginia's Alcohol Safety Action Program.

WHEREAS, the Highway Safety Division is responsible for the administration of local alcohol safety action programs throughout the Commonwealth pursuant to § 18.2-271.1 of the Code of Virginia; and

WHEREAS, the Division of Substance Abuse of the Department of Mental Health and Mental Retardation is required by § 37.1-218 of the Code of Virginia to cooperate with the Highway Safety Division "in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;" and

WHEREAS, the specific relationship between the Highway Safety Division and the Department of Mental Health and Mental Retardation has been neither legislatively nor operationally defined resulting in duplication of responsibility between the two agencies as well as conflicting activities and regulatory authority; and

WHEREAS, a study is needed to review the major issues affecting the Highway Safety Division and the Department of Mental Health and Mental Retardation as they relate to Virginia's Alcohol Safety Action Program; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the House of Delegates Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services are requested to appoint a joint subcommittee to study the relationship between the Highway Safety Division and the Department of Mental Health and Mental Retardation regarding the Virginia Alcohol Safety Action Program.

The joint subcommittee shall conduct a thorough review and analysis of § 18.2-271.1 and Chapter 11 of Title 37.1 of the Code of Virginia, both of which pertain to the mandated roles and responsibilities of the aforementioned State agencies.

The joint subcommittee shall report its findings and recommendations to the Governor and General Assembly no later than December one, nineteen hundred seventy-eight.

Pursuant to House Joint Resolution No. 136, the following Senators and Delegates were appointed to serve on the Joint Subcommittee: Senator A. Joe Canada, Jr., of Virginia Beach; Senator James T. Edmunds, of Kenbridge; Senator Virgil H. Goode, Jr., of Rocky Mount; Delegate Johnny S. Joannou, of Portsmouth; Delegate Lewis P. Fickett, Jr., of Fredericksburg; Delegate Thomas J. Michie, Jr., of Charlottesville; Delegate William P. Robinson, Sr., of Norfolk; Delegate Norman Sisisky, of Petersburg and Delegate C. Jefferson Stafford, of Pearisburg. Citizen members appointed to the Joint Subcommittee were Donald H. Sandie, Judge of the General District Court of Portsmouth and Henry J. Schriberg, Judge of the Richmond General District Court - Traffic Division. Delegate Joannou was selected to serve as chairman of the Joint Subcommittee.

HISTORY

For the past two years, the Department of Mental Health and Mental Retardation and the Department of Transportation Safety (formerly the Division of Highway Safety) have recognized areas of concern which have affected the delivery of adequate services to the drinking driver and alcohol abuser. This concern has been shared at both the State and community level, and has come to the attention of the General Assembly which has introduced numerous bills and resolutions to bring clarity and improvement to existing service relationships. The adoption of House Joint Resolution No. 136 in the 1978 General Assembly Session created this Joint Subcommittee. The purpose of the Joint Subcommittee as outlined during the initial phase of the Subcommittee's work is to:

(1) consider the dual responsibilities between the Department of Transportation Safety and the Department of Mental Health and Mental Retardation as mandated by § 18.2-271.1 and Chapter 11 of Title 37.1 of the Code of Virginia,

(2) examine the standards for the establishment and operation of local alcohol safety action programs and the overlapping responsibilities for the education, treatment and rehabilitation of the drinking driver,

(3) develop an effective method for assessing the needs of the drinking driver and for referring him to the most efficacious program for rehabilitation and treatment, and

(4) examine the utilization of fees for services and for the "extended care" of the drinking driver.

The Joint Subcommittee to Study the Virginia Alcohol Safety Action Program held three public hearings throughout the State. Testimony regarding the division of responsibility between the Department of Transportation Safety and the Department of Mental Health and Mental Retardation was presented by local alcohol safety action program directors and administrators, local providers of

mental health services, the judiciary, law enforcement officials and other interested citizens. Representatives of both the Department of Transportation Safety and the Department of Mental Health and Mental Retardation attended each public hearing and worked closely with the Joint Subcommittee to identify areas of overlapping responsibility in providing education and treatment to the driving under the influence defendant.

RECOMMENDATIONS

Upon completion of the public hearings, the two State agencies (the Department of Transportation Safety and the Department of Mental Health and Mental Retardation) met jointly to address the concerns expressed by members of the Joint Subcommittee and documented in testimony presented during the public hearings. An interagency agreement detailing recommendations of the two agencies to delineate roles and responsibilities for the education and treatment of the driving under the influence defendant was presented to the Joint Subcommittee. The following recommendations were accepted by the Joint Subcommittee:

1. Definition.

An alcohol safety action program, as a criminal justice program under court direction, primarily is responsible for the identification and referral of the driving under the influence defendant to appropriate services, consisting of alcohol education, driver awareness training and treatment. Additionally, alcohol safety action programs serve a probationary function by defendant monitoring and follow-up to the court. It is recommended that each alcohol safety action program be responsible to the court, and operate in accordance with guidelines and regulations variously established by the Department of Transportation Safety and the Department of Mental Health and Mental Retardation.

It is the sense of the Joint Subcommittee that the alcohol safety action program should be available to all citizens of the Commonwealth; however, the Joint Subcommittee does not recommend the mandatory establishment of alcohol safety action programs throughout the State at this time.

2. Case Management.

It is recommended that alcohol safety action programs have primary responsibility for case management, in accordance with guidelines and regulations established by the Department of Transportation Safety. Case management is a probationary function, which includes intake, classification, referral, defendant monitoring and transmission of appropriate reports to the courts and Department of Transportation Safety. To ensure that driving under the influence defendants receive services responsive to their particular needs, it is necessary to establish minimum qualifications for this function. Alcohol safety action programs should employ case managers in accordance with guidelines, regulations and specific competencies jointly established by the Department of Transportation Safety and the Department of Mental Health and Mental Retardation. It is recommended that a certification process for these case managers be explored with the Virginia Board of Behavioral Science.

3. Classification.

It is recommended that the criteria for initially determining the level of need for individual driving under the influence defendants be reviewed and approved by the Department of Mental Health and Mental Retardation.

4. Alcohol Education.

It is recommended that alcohol education refer to cognitive information on alcohol and its effects provided to driving under the influence defendants through a structured curriculum. The Department of Mental Health and Mental Retardation is responsible for ensuring that a standardized alcohol education curriculum for driving under the influence defendants is developed for Statewide implementation. The community college system should be involved in the development and, where appropriate, the delivery of the alcohol education curriculum. With the exception of driver education, school-based activities related to alcohol are the combined responsibility of the Department of Education and the Department of Mental Health and Mental Retardation and their local systems. Technical assistance and support should be provided by the Department of Transportation Safety.

5. Driver Awareness Training.

It is recommended that driver awareness training refer to a structured curriculum of driving skills and the effects of alcohol consumption on such skills. The Department of Transportation Safety is responsible for the development of a standardized curriculum in this area. As with alcohol education, the community colleges should be involved in the design and, where appropriate, the delivery of driver awareness education.

6. Treatment Services.

It is recommended that treatment services refer to the broad range of emergency, outpatient, intermediate, inpatient and long-term shelter services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling which may be extended to alcoholics and intoxicated persons. It is recommended that the Department of Mental Health and Mental Retardation maintain responsibility as provided in Title 37.1-218G and 37.1-219, for promulgating and implementing uniform standards for all alcohol treatment programs. This means that any private or public alcohol service provider in Virginia, which provides services to alcohol safety action programs must maintain minimum service standards as established by the Department of Mental Health and Mental Retardation through quality assurances, e.g., licensure and certification. An alcohol safety action program should only contract with service providers which meet these minimum quality assurances.

7. Fees and Fee Structure.

During the public hearings, the Joint Subcommittee heard testimony from a number of local alcohol safety action program directors and administrators who agree that to remain self-sufficient the local alcohol safety action programs need to increase the fee for the program. Supporting testimony and consideration of the rate of inflation illustrated by a cost of living increase estimated at ten percent per year since the enactment of the legislation instituting the alcohol safety action program in 1975, lead the Joint Subcommittee to recommend that the fee for entering an alcohol safety action program be increased from not more than two hundred dollars to not more than two hundred fifty dollars to be charged each defendant entering an alcohol safety action program.

Procedures and guidelines for the allocation of funds derived from fees to cover the local administration of alcohol safety action programs, to include driver awareness training, should be reviewed and approved by the Department of Transportation Safety. The Department of Mental Health and Mental Retardation should review and approve all contracts made with providers for alcohol education and treatment services. Treatment programs may charge additional fees as are required to cover the usual, normal and reasonable costs of treatment of persons referred under alcohol safety action programs.

8. Public Information.

It is recommended that public information which impacts on the driving population refer to presentations, printed materials and media coverage which provides information and training on drinking while driving to the general public with emphasis on the prevention of driving under the influence. The Department of Transportation Safety should be responsible for public information and should seek assistance and support from the Department of Mental Health and Mental Retardation to ensure the accuracy of materials related to alcohol. Further, it is recommended that the Department of Transportation Safety support and coordinate community public information activities provided by alcohol safety action programs.

CONCLUSION.

In reaching agreement on the preceding recommendations, it was necessary that both agencies review and share their particular mandates, primary orientation and service priorities. It was agreed that the Department of Transportation Safety should be concerned with highway safety and the Department of Mental Health and Mental Retardation with the treatment and rehabilitation of alcoholics and alcohol abusers. Both agree their goals and responsibilities are not mutually exclusive, therefore, services should not be carried out in isolation. For both agencies, an immediate objective must be the elimination of inconsistencies and ambiguities which exist in services provided, operational standards, and agency relationships at both the State and community levels.

Because of this involvement it is necessary that both agencies assume responsibility for evaluating not only the effectiveness of their individual areas of responsibility, but also of how well their combined efforts meet the total needs of the driving under the influence defendant. The actual mechanism for evaluation cannot be determined until the service responsibilities of the two agencies are decided. Following the successful resolution of the areas mentioned in this report, both agencies are committed to jointly developing an evaluation strategy with the capacity of assessing the entire system as it responds to the needs of the driving under the influence defendant.

To facilitate the coordination of the efforts of the Department of Mental Health and Mental Retardation and the Department of Transportation and Safety in providing services and treatment to the driving under the influence defendant, the Joint Subcommittee encourages the two agencies to establish by executive agreement an interagency review team. The composition of the review team and its powers and duties should be considered in the agreement.

The members of the Joint Subcommittee to Study the Virginia Alcohol Safety Action Program respectfully submit this report and the accompanying legislation.

Respectfully submitted,

Delegate Johnny S. Joannou, Chairman

Senator A. Joe Canada, Jr.

Senator James T. Edmunds

Delegate Lewis P. Fickett, Jr.

* Senator Virgil H. Goode, Jr.

Delegate Thomas J. Michie, Jr.

Delegate William P. Robinson, Sr.

Judge Donald H. Sandie

Judge Henry J. Schrieberg

Delegate Norman Sisisky

Delegate C. Jefferson Stafford

* Comment by Senator Virgil H. Goode, Jr. (next page).



COMMONWEALTH OF VIRGINIA
SENATE

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COMMENT BY VIRGIL GOODE, JR.

Originally, I did not support VASAP, and I still have many misgivings about the program. The subcommittee is not recommending mandatory establishment of this program throughout the state, and I do not think that the State should mandate VASAP or any curriculum onto the localities and would object to any mandate implied by the term "statewide implementation" on page 9 of the report.

Although not directly relevant to the study under H.J.R. 136, I would like to make the following observation about VASAP.

A number of court officials, law enforcement officers, and even some judges have indicated that VASAP is simply a means to keep one's driver's license and that a reckless driving conviction is now often more severe than being caught driving drunk and going into VASAP.

Thus, one item that should be considered, by the appropriate entity, for improvement in the VASAP program would be to take a person's license during the VASAP treatment and allow only driving to and from work and to and from the program under the order of the Judge.

APPENDIX A

A BILL to amend and reenact § 18.2-271.1 of the Code of Virginia, relating to the Virginia Alcohol Safety Action Program.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-271.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-271.1. Probation, education and rehabilitation of person charged; person convicted under law of another state.—(a) Any person charged with a violation of § 18.2-266, or any ordinance of a county, city or town similar to the provisions thereof, or any second or other subsequent offense thereunder, may upon a plea of guilty or after hearing evidence which is sufficient in law to give rise to a finding of guilt, with leave of court or upon court order, with or without a finding of guilt by the court or jury, enter into an alcohol safety action program, or a driver alcohol rehabilitation program or such other alcohol rehabilitation program as may in the opinion of the court be best suited to the needs of such person, 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. In the determination of the eligibility of such person to enter such a program, the court shall consider his prior record of participation in any other alcohol rehabilitation program.

(a1) The court shall require the person entering such program under the provisions of this section to pay a fee of not more than two hundred *fifty* dollars, a reasonable portion of which as may be determined by the Director of the ~~Highway Safety Division~~ *Department of Transportation Safety*, but not to exceed twenty dollars, shall be forwarded to be deposited with the State Treasurer for expenditure by the ~~Highway Safety Division~~ *Department of Transportation Safety* for administration of driver alcohol rehabilitation programs, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Notwithstanding any other provision of law requiring a conviction prior to the imposition of court costs, the court may require all persons entering such program under the provisions of this section to pay all costs of the proceeding which would have been payable by such person upon a conviction of a violation of § 18.2-266, or any ordinance of a county, city or town similar to the provisions thereof. In addition, such fees as may reasonably be required of defendants referred for extended treatment under any such program may be charged.

(b) If the court finds that such person is not eligible for such program or violates any of the conditions set forth by the court in entering such program, the court shall dispose of the case as if no program had been entered. If the court finds that such person has complied with its order and has completed such program successfully, such compliance may be accepted by the court in lieu of a conviction under § 18.2-266 and the requirements specified in § 18.2-271, or the court may amend the warrant and find such person guilty of such other violations of the traffic laws as the evidence may show and assess such fines and costs for such offense as required by law.

(b1) Any person who has been convicted in another state of the violation of a law of such state similar to § 18.2-266, and whose privilege to operate a motor vehicle in this State is subject to revocation under the provisions of § 46.1-417, may petition the general district court of the county or city in which he resides that he be given probation and assigned to a program as provided in subsection (a) of this section. If the court shall find that such person would have qualified therefor if he had been charged in this State for a violation of § 18.2-266, the court shall grant the petition, and restore such person's privilege to operate a motor vehicle in this State, or if unrevoked, stay any forthcoming order of the Commissioner of the Division of Motor Vehicles revoking such privilege. A copy of the order granting the petition shall be forthwith sent to the Commissioner of the Division of Motor Vehicles. Upon the granting of the petition and entry of the order, the driving privilege of such person shall be restored upon condition that he comply with the order or further orders of the court. If such person violates any condition set out by the court, the court may revoke his driving privilege. Upon satisfactory completion of the program, the court may restore such privilege without condition. In case of either revocation or unconditional restoration of such privilege, the court shall forthwith send a copy of its order to the Commissioner of the Division of Motor Vehicles.

(b2) The court shall have jurisdiction over any person entering such program under any

provision of this section until such time as the case has been disposed of by either successful completion of the program, or revocation due to ineligibility or violation of a condition or conditions imposed by the court; whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall be made by first class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than ten days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege.

(c) The State Treasurer or any city or county is authorized to accept any gifts or bequests of money or property, and any grant, loan, service, payment or property from any source, including the federal government, for the purpose of driver alcohol education. Any such gifts, bequests, grants, loans or payments shall be deposited in the separate fund provided in (a1) hereof.

(d) The ~~Highway Safety Division~~ *Department of Transportation Safety* , or any county, city, town, or cities or any combination thereof may establish alcohol safety action programs or driver alcohol treatment and rehabilitation programs or driver alcohol education programs in connection with highway safety. The ~~Highway Safety Division~~ *is Department of Transportation Safety and the Department of Mental Health and Mental Retardation* are authorized to establish standards and criteria for the implementation *and operation* of such programs. ~~It may~~ *The Department of Transportation Safety shall* establish criteria for the modalities of administration of such programs, as well as public information, accounting procedures and allocation of funds. Funds paid to the State hereunder shall be utilized by the ~~Division~~ *Department of Transportation Safety* to offset the costs of State programs and local programs run in conjunction with any county, city or town. The ~~Highway Safety Division shall establish standards of evaluation for the programs set out herein, and~~ *Department of Transportation Safety shall submit an annual report as to its actions taken at the close of each calendar year to the Governor and the General Assembly.*

(e) Nothing in this section shall be construed to prevent the exercise by a court of its authority to make any lawful disposition of a charge of a violation of § 18.2-266 or a similar offense under any county, city or town ordinance.

