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## 1982 Amendments to Virginia's Driving While Intoxicated Laws

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# 1982 AMENDMENTS TO VIRGINIA'S DRIVING WHILE INTOXICATED LAWS

## I. INTRODUCTION

The problem of fatal automobile crashes involving alcohol-impaired drivers has reached epidemic proportions in the United States. While the exact number of alcohol-related crashes is not known, almost one-half of all fatally injured drivers tested in the United States were found to have been too intoxicated to drive.<sup>1</sup> Although statistics show a lower percentage of alcohol-related fatal crashes in Virginia than the prevailing national average,<sup>2</sup> the pervasiveness of the problem and its dire consequences<sup>3</sup> resulted in legislative action to change Virginia's laws governing drinking and driving.

In 1982 the Virginia General Assembly amended several statutory sections<sup>4</sup> pertaining to persons driving while intoxicated (DWI). In most instances, the legislation instituted both harsher and mandatory measures of punishment<sup>5</sup> although the harshness is alleviated somewhat by provision for a restricted drivers license.<sup>6</sup>

This article sets forth a brief history of the drinking and driving problem in general, with special emphasis on the situation in Virginia. The recent statutory changes to Virginia's DWI laws are summarized by comparison of the penalties and provisions of the old<sup>7</sup> and new<sup>8</sup> statutes. This

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1. This proposition is based on the high blood alcohol content (BAC) of those drivers tested. Forty to fifty-five percent had BAC's exceeding 0.10%, which exceeds the limits allowed under the laws of most states. U.S. DEP'T OF TRANSP., ALCOHOL AND HIGHWAY SAFETY, A REVIEW OF THE STATE OF KNOWLEDGE 8, 65 (1978) [hereinafter cited as ALCOHOL AND HIGHWAY SAFETY]; U.S. DEP'T OF TRANSP., ALCOHOL AND HIGHWAY SAFETY, A REPORT TO THE CONGRESS FROM THE SECRETARY OF TRANSPORTATION (1968), cited in Comment, *VASAP: A Rehabilitation Alternative to Traditional DWI Penalties*, 35 WASH. & LEE L. REV. 673 (1978).

2. Alcohol-related fatalities in Virginia were 30.7% in 1971, but decreased to 26.8% in 1972, and 29.0% in 1973. Between 1974 and 1980 such fatalities averaged approximately 33%. VA. ALCOHOL SAFETY ACTION PROGRAM, VA. DEP'T OF TRANSP. SAFETY, VASAP FACT SHEET 3-1 (April 15, 1982) [hereinafter cited as VASAP FACT SHEET].

3. The unchanged percentiles between 1974 and 1980 translate to a loss of approximately 353 lives per year due to alcohol-impaired drivers. Compiled from VASAP FACT SHEET, *supra* note 2, at 3-1.

4. Act of April 8, 1982, ch. 301, 1982 Va. Acts (codified at VA. CODE ANN. §§ 18.2-36, 18.2-270 to -271.1, 46.1-417 (Repl. Vol. 1982) (effective date of July 1, 1982)). Virginia Acts contains both previous and current statutory language.

5. See 1982 Va. Acts, ch. 301.

6. VA. CODE ANN. § 18.2-271.1(b1a) (Repl. Vol. 1982). See *infra* notes 60-61 and accompanying text.

7. See 1982 Va. Acts, ch. 301.

8. VA. CODE ANN. §§ 18.2-36, -270 to -271.1, 46.1-417 (Repl. Vol. 1982) were amended by

article also analyzes whether the new statutory changes are actually more stringent. This analysis draws on the results of studies from other localities which have enacted "stricter" DWI laws.<sup>9</sup> The conclusion offers a forecast of whether the new laws will result in harsher punishment and considers possible future developments in Virginia's DWI laws.

## II. THE PROBLEM OF DRINKING DRIVERS

### A. *In General*

By 1903, ten years after the introduction of the automobile in the United States, DWI already had become a problem;<sup>10</sup> and by 1940, alcohol was perceived as a major problem in traffic safety.<sup>11</sup> Public pressure mounted on the federal government to make highways safer, and Congress responded by passing two highway safety acts.<sup>12</sup> Pursuant to one of those acts, the Department of Transportation in 1968 published the results of a comprehensive study of the relationship between alcohol and highway safety.<sup>13</sup> Two specific findings emerged from this study: "Alcohol is involved in 50% of traffic fatalities," and "alcoholics and problem drinkers, who constitute but a small minority of the general population, account for a very large part of the overall highway safety problem."<sup>14</sup> These two findings shaped the general policies of the federal government in the late 1960's and 1970's.<sup>15</sup> The result was the creation of Alcohol Safety Action Projects (ASAP's), which initiated programs designed to reduce drinking and driving on the nation's highways.<sup>16</sup>

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the 1982 DWI legislation.

9. The effectiveness of stricter DWI laws in reducing the number of alcohol-impaired drivers is beyond the scope of this article. An analysis of the efficacy of legislation is a separate subject from an analysis of its stringency.

10. Cameron, *The Impact of Drinking-Driving Countermeasures: A Review and Evaluation*, 8 CONTEMP. DRUG PROBS. 495 (1979). See Comment, *supra* note 1, at 674. See also ALCOHOL AND HIGHWAY SAFETY, *supra* note 1, at 3 (a broad generalization is made that alcohol and driving have long been recognized as a serious health problem).

11. Cameron, *supra* note 10, at 496.

12. Highway Safety Act of 1966, Pub. L. No. 89-564, 80 Stat. 731 (1967) (codified at 23 U.S.C. §§ 105, 307, 307 note, 401-407 (Supp. 1982)); National Traffic and Motor Vehicle Safety Act of 1966, Pub. L. No. 89-563, 80 Stat. 718 (1967) (codified at 15 U.S.C. §§ 1301 note, 1381-1431 (1982)).

13. *Id.* at 501-02.

14. U.S. DEP'T OF TRANSP., ALCOHOL AND HIGHWAY SAFETY, A REPORT OF THE CONGRESS FROM THE SECRETARY OF TRANSPORTATION (1968), *quoted in* Cameron, *supra* note 10, at 502. Fifty percent of the traffic fatalities in the United States for one year equals approximately 25,000 deaths. Comment, *Criminal Law—Mandatory Jail Sentences: An Effective Solution to the Drunk Driver Crisis?*—Wash. Rev. Code § 46.61.515 (1979), 55 WASH. L. REV. 677, 678 n.9 (1980).

15. Cameron, *supra* note 10, at 502.

16. *Id.* at 503. See VASAP FACT SHEET, *supra* note 2, at 1-1, 2-1. The specific countermeasures employed, and the success or failure of the ASAP's are beyond the scope of this article. For a comprehensive discussion of the ASAP programs in the United States, see

States reacted to the federal findings by enacting blood alcohol content (BAC)<sup>17</sup> and "implied consent" legislation.<sup>18</sup> All states define alcohol impairment in terms of BAC.<sup>19</sup> Some states, though, make a distinction as to whether a specified maximum BAC is "presumptive" or "per se" evidence of alcohol-impairment.<sup>20</sup> The passage and enforcement of the state legislation, though, was impeded by prevailing attitudes which did not condone strict measures against the drunk driver. The drunk driver was viewed not as a criminal but as someone who was "just careless, possibly sick, perhaps even funny."<sup>21</sup> However, in 1982, state legislative sessions demonstrated a shift in this complacency. Over half of the state legislatures are now reexamining their drunk-driving laws, while many have enacted tough new laws to crack down on drunk drivers.<sup>22</sup>

## B. Virginia

Virginia has faced DWI problems similar to those faced by the nation as a whole. The problem of drinking drivers was addressed by statute in

Cameron, *supra* note 10; ALCOHOL AND HIGHWAY SAFETY, *supra* note 1. For a comprehensive study of the ASAP program in Virginia, see Comment, *supra* note 1.

17. Blood alcohol level is the measure of alcohol present in a given volume of blood. For example, if a given measurement showed 0.01 grams of alcohol in a 100 milliliter sample of blood, the result would be interpreted as 0.10% blood alcohol concentration (BAC). ALCOHOL AND HIGHWAY SAFETY, *supra* note 1, at 5.

18. Under the principle of implied consent, when a person drives, the person impliedly consents to submit to a chemical test if asked to do so after being arrested for DWI. A refusal to submit results in a loss of license. *Id.* at 38.

19. In 48 states a BAC of 0.10% or higher constitutes impairment. In Idaho and Utah the maximum level is only 0.08%. *Id.* at 37.

20. In the 23 states that have "per se" laws, driving with a BAC exceeding a given value is deemed illegal. Gaynes, *Putting the Brakes on Drunk Driving*, STATE LEGISLATURES, July/Aug., 1982, at 29; NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., FACTS ON ALCOHOL AND HIGHWAY SAFETY LAWS 3 (1982).

21. Gaynes, *supra* note 20, at 28.

22. The states of Arizona, Florida, Kansas, Maine, New Mexico and Utah are among states including mandatory punishments in their statutes for conviction of DWI. *Id.* at 28. Virginia's 1982 changes also include mandatory punishments. VA. CODE ANN. § 18.2-270 (Repl. Vol. 1982). See *infra* note 42. Besides Virginia, states recently enacting major revisions in their DWI laws are: Arizona, 1982 Ariz. Sess. Laws 2d Reg. Sess., ch. 234 (to be codified at ARIZ. REV. STAT. ANN. § 28); California, CAL. VEH. CODE §§ 23100, 23151, 23231 (West Cum. Supp. 1982); Colorado, 1982 Colo. Sess. Laws 82-408 (to be codified at COLO. REV. STAT. § 42-4); Florida, 1982 Fla. Sess. Law Serv., ch. 82-155 (West); Kansas, KAN. STAT. ANN. § 8-237 (Cum. Supp. 1981) (amendments effective Jan. 1, 1983); Maine, ME. REV. STAT. ANN. tit. 29, §§ 1312-1312D, 1314, 1863, 2184, 2241, 2241-I, 2292 to 2298-A, 2301, 2306 (1981); Maryland, MD. TRANSP. CODE ANN. §§ 16-205 to -303 (Cum. Supp. 1982); Minnesota, 1982 Minn. Sess. Law Serv., ch. 423 (West); Ohio, OHIO REV. CODE ANN. §§ 2903.06-07, 4507.16, 4507.38, 4507.99, 4511.19, 4511.99, 4511.191 (Page 1981); South Dakota, S.D. CODIFIED LAWS ANN. §§ 32-23-1 to -4, -23-7, -23-10 to -11.1, -23-13 to -14.1, -24-3 to -7 (Interim Supp. 1982); Tennessee, 1982 Tenn. Pub. Acts, ch. 891 (codified at TENN. CODE ANN. § 55-10-403 (Advance Leg. Serv. 1982)); Utah, UTAH CODE ANN. § 41-6-44 (1982); Wyoming, WYO. STAT. § 31-5-233, -1117, -7-127 (Supp. 1982).

1916.<sup>23</sup> Since then, Virginia has adopted measures taken by other states, such as implied consent,<sup>24</sup> BAC testing,<sup>25</sup> and "presumptive" evidence of impairment.<sup>26</sup>

Virginia currently has a Virginia Alcohol Safety Action Program (VASAP) with a state office and twenty-five local programs.<sup>27</sup> The 1975 General Assembly enacted legislation which coupled the VASAP rehabilitative approach with traditional punitive statutes.<sup>28</sup> Similarly the 1982 changes to Virginia's DWI laws interact with the Virginia Code section authorizing VASAP treatment of persons charged with alcohol impairment.<sup>29</sup> However, these changes, passed in part due to pressure applied by citizen's lobby groups,<sup>30</sup> resulted in stricter DWI laws. Virginia has thus joined other states which are implementing mandatory punishment for DWI.<sup>31</sup>

### III. CHANGES IN VIRGINIA'S DWI LAWS

#### A. *Involuntary Manslaughter*

The revision of Virginia's DWI laws changed the punishment for involuntary manslaughter from a class six felony to a class five felony.<sup>32</sup> This

23. H. 387, 1916 Va. Acts (codified at VA. CODE § 4722 (1916)) provided, in part, that "it shall be unlawful for any chauffeur, motorman, engineer, or other persons to drive or run any automobile, car, truck, engine, or train while under the influence of intoxicants," *quoted in Comment, supra* note 1, at 674 n.14.

The current statute reads, in part: "It shall be unlawful for any person to drive or operate any motor vehicle, engine or train while under the influence of alcohol, or while under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature." VA. CODE ANN. § 18.2-266 (Repl. Vol. 1982).

24. VA. CODE ANN. § 18.2-268(b) (Repl. Vol. 1982).

25. *Id.* § 18.2-269.

26. *Id.* § 18.2-269(3) which states in reference to BAC testing: "If there was at that time 0.10 percent of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants." *Id.* This presumption is evidence to be considered by the jury. However, the accused may present evidence to rebut this presumption. *Kay v. United States*, 255 F.2d 476, 481 (4th Cir. 1958). Virginia is one of 27 states that have not enacted "per se" laws. *See supra* note 20 and accompanying text.

27. VASAP FACT SHEET, *supra* note 2, at 2-1, 2-2.

28. Comment, *supra* note 1, at 673.

29. Compare VA. CODE ANN. § 18.2-271.1 (Repl. Vol. 1982) with VA. CODE ANN. § 18.2-271.1 (Cum. Supp. 1977).

30. Pressure was applied to Virginia's legislators by citizens' lobby groups. This pressure resulted in swift passage of the new DWI laws. Interview with Julian Hickman, VASAP Evaluator, Virginia Department of Transportation Safety, in Richmond, Virginia (August 3, 1982). The intensity of the lobbying effort is demonstrated by the fact that no legislative studies were conducted prior to implementation of the new DWI laws. Generally studies are conducted prior to major legislative revisions. As a result, little or no legislative history is available. Telephone interview with Mary Devine, Virginia Legislative Services, in Richmond (July 28, 1982).

31. *See* Gaynes, *supra* note 20, at 28-30.

32. 1982 Va. Acts, ch. 301, § 18.2-36 (codified at VA. CODE ANN. § 18.2-36 (Repl. Vol.

marks a significant change, as the punishment range for a class six felony is imprisonment for not less than one year, nor more than five years;<sup>33</sup> whereas a class five felony is punishable by imprisonment for not less than one year, nor more than ten years.<sup>34</sup> The maximum range of punishment was thus increased by five years.

One definition of involuntary manslaughter is the killing of one accidentally, without intent, while improperly performing a lawful act constituting criminal negligence.<sup>35</sup> The definition fits an intoxicated person who accidentally kills another while driving an automobile. This act is an improper act that may constitute criminal negligence.

In Virginia, one committing a homicide while violating the DWI sections of the Virginia Code<sup>36</sup> may be convicted of involuntary manslaughter.<sup>37</sup> The evidence of a DWI conviction is admissible to show criminal negligence, that is, to show negligence so gross and culpable as to indicate a callous disregard for human life. The degree of intoxication is an important circumstance relevant to making the determination of criminal negligence, as opposed to a finding of simple negligence.<sup>38</sup> A finding of simple negligence is not sufficient to support a felony charge of involuntary manslaughter.<sup>39</sup>

The increase in the maximum allowable punishment to which a drinking driver may be subjected is viewed by proponents as a measure that will deter drinking and driving.<sup>40</sup> The desired goal is a concomitant reduction in traffic fatalities. The belief is that since alcohol impairment is the number one cause of traffic fatalities, deterring drinkers from driving

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1982)).

33. VA. CODE ANN. § 18.2-10(f) (Repl. Vol. 1982) reads:

(f) For Class 6 felonies, a term of imprisonment of 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, confinement in jail for not more than twelve months and a fine of not more than \$1,000, either or both.

34. *Id.* § 18.2-10(e) states:

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than ten years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$1,000, either or both.

35. *E.g.*, King v. Commonwealth, 217 Va. 601, 231 S.E.2d 312 (1977).

36. VA. CODE ANN. § 18.2-266 (Repl. Vol. 1982). See *supra* note 23.

37. *Massie v. Commonwealth*, 177 Va. 883, 886, 15 S.E.2d 30, 31 (1941).

38. *Beck v. Commonwealth*, 216 Va. 1, 5, 216 S.E.2d 8, 10 (1975).

39. *King v. Commonwealth*, 217 Va. 601, 606, 231 S.E.2d 312, 316 (1977).

40. The general theme of citizens' groups who lobbied the 1982 General Assembly for stricter DWI laws was that increased sanctions would deter drinking and driving. See Interview with Julian Hickman, *supra* note 30. Some of the major citizens' lobby groups in Virginia are Mothers Against Drunk Driving (MADD), Many Against Drunk Driving (MADD), and Concerned Citizens.

will reduce the number of fatalities.<sup>41</sup>

### B. Penalties for DWI

Many changes were made in the Virginia Code section that sets punishments for DWI. These changes increased the maximum punishments and fines permissible and established mandatory minimum jail sentences.<sup>42</sup>

For first convictions, the previous statutory language defined DWI as a class two misdemeanor, punishable by confinement for not more than six months and a fine of not more than \$500, either or both;<sup>43</sup> the 1982 change defines DWI as a class one misdemeanor, punishable by confinement for not more than twelve months and/or a fine of not more than \$1,000.<sup>44</sup> Previously, second and subsequent convictions within ten years were punishable by confinement for not less than one month, nor more than one year, and a fine of not less than \$200, nor more than \$1,000.<sup>45</sup> In the 1982 changes second and third convictions are treated differently. A second conviction within five years is punishable by confinement for not

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41. Cf. ALCOHOL AND HIGHWAY SAFETY, *supra* note 1, at 35-41 (comprehensive discussion of the legal/deterrence approach).

42. 1982 Va. Acts, ch. 301, § 18.2-270 (codified at VA. CODE ANN. § 18.2-270 (Repl. Vol. 1982)), which reads, in part:

Any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense within less than five years after a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$1,000 and by confinement in jail for not less than one month nor more than one year. Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense within a period of five to ten years of a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$1,000 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense within ten years of an offense under § 18.2-266 shall be punishable by a fine of not less than \$500 nor more than \$1,000 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.

Information used to compile a summary of changes in Virginia's DWI laws was compiled from 1982 Va. Acts, ch. 301 and Va. Highway Transp. Research Council, *Statutory Summary of Changes to Virginia's DWI Laws (1982)* (unpublished manuscript available from Virginia Transportation Research Council, Charlottesville, Virginia) [hereinafter cited as *Statutory Summary*].

43. 1982 Va. Acts, ch. 301, § 18.2-270; *Statutory Summary, supra* note 42.

44. 1982 Va. Acts, ch. 301, § 18.2-270; *Statutory Summary, supra* note 42. See VA. CODE ANN. § 18.2-11(a) (Repl. Vol. 1982) (Punishment for a class one misdemeanor is confinement in jail for not more than twelve months and a fine of not more than \$1,000, either or both.).

45. 1982 Va. Acts, ch. 301, § 18.2-270; *Statutory Summary, supra* note 42.

less than two months, nor more than one year, and a fine of not less than \$200 nor more than \$1,000. Also, third and subsequent convictions within ten years are punishable by confinement for not less than two months, nor more than one year, and a fine of not less than \$500, nor more than \$1,000.<sup>46</sup>

Mandatory minimum jail sentences were also introduced by the new DWI legislation.<sup>47</sup> Prior to this legislation, there were no mandatory periods of confinement for either first or subsequent convictions.<sup>48</sup> Currently, a second conviction within five years is punished by mandatory confinement for forty-eight hours. A third conviction within five years is punished by a mandatory confinement for thirty days. A third conviction within a period of five to ten years after first conviction is punished by mandatory confinement for ten days.<sup>49</sup>

### C. *Loss of Drivers License for DWI*

In examining the statutory changes made by section 18.2-271 of the Virginia Code, which governs license revocation and suspension, it is necessary to note the following language, "[e]xcept as provided in § 18.2-271.1, . . ."<sup>50</sup> The exceptions referred to are suspension of revocation of

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46. 1982 Va. Acts, ch. 301, § 18.2-270; Statutory Summary, *supra* note 42.

47. 1982 Va. Acts, ch. 301, § 18.2-270.

48. *Id.*

49. *Id.*

50. VA. CODE ANN. § 18.2-271 (Repl. Vol. 1982) states:

Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under § 18.2-266, or for a similar offense under any county, city or town ordinance, 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 six months from the date of such judgment. If such conviction is for a second or other subsequent offense (i) within five years of a first offense conviction under § 18.2-266 such person's license to operate a motor vehicle, engine or train shall be suspended for a period of three years or, (ii) within five to ten years of a first offense conviction under § 18.2-266 such person's license to operate a motor vehicle, engine or train shall be suspended for a period of two years from the date of the judgment of conviction. Any such period of license suspension, 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. If any person has heretofore been convicted or found not innocent in the case of a juvenile of violating any similar act in the Commonwealth or any other state and thereafter is convicted of violating the provisions of § 18.2-266, such conviction or finding shall for the purpose of this section and § 18.2-270 be a subsequent offense and shall be punished accordingly. Six months of any license suspension or revocation imposed pursuant to this section for a first offense conviction may be suspended, in whole or in part by the court upon the entry of such person convicted into and the successful completion of a program pursuant to § 18.2-271.1. Upon a second conviction, the court may not suspend more than two years of such license suspension or revocation if such second conviction occurred less than five years after a previous conviction under § 18.2-270, nor more than one year if such second conviction occurred five to ten years after a previous conviction. Upon a third



a drivers license, premised on VASAP attendance, and the issuance of a restricted drivers license.<sup>51</sup>

A summary of the changes in drivers license revocation and suspension follows.<sup>52</sup> For first convictions, the previous statute called for mandatory revocation for a period of not less than six months, nor more than one year, in the discretion of the judge.<sup>53</sup> The 1982 change results in revocation of the license for six months; however, the entire six months may be suspended by the court, conditioned upon the completion of the VASAP program.<sup>54</sup> Previously, second convictions within ten years resulted in mandatory license revocation for a period of three years. Currently a second conviction within a period of five years results in license revocation for three years. No more than two of the three years may be suspended by the court. A second conviction within a period of five to ten years of a previous conviction results in license revocation for two years. No more than one year of the two years may be suspended by the court. Third convictions result in permanent revocation under both the previous and the current statutory sections.<sup>55</sup>

#### D. VASAP Referrals; The Restricted License; and Out-of-State DWI Convictions

##### 1. VASAP Referrals

VASAP entrance requirements are governed by section 18.2-271.1 of the Virginia Code.<sup>56</sup> Under the previous statutory language a conviction

conviction of a violation of § 18.2-266, such person shall not be eligible for participation in a program pursuant to § 18.2-271.1.

51. VA. CODE ANN. § 18.2-271.1(a), (b1a), (Repl. Vol. 1982). See *infra* notes 56, 60.

52. 1982 Va. Acts, ch. 301; Statutory Summary, *supra* note 42. See *supra* note 42.

53. 1982 Va. Acts, ch. 301, § 18.2-271 (codified at VA. CODE ANN. § 18.2-271 (Repl. Vol. 1982)); Statutory Summary, *supra* note 42. In 1981, the usual disposition of a DWI first conviction in Virginia was a VASAP referral. VASAP FACT SHEET, *supra* note 2, at 3-1. The result was a conviction rate of less than 28% of those arrested for DWI. *Id.* at 3-1, table 3.2.

54. 1982 Va. Acts, ch. 301, § 18.2-271; Statutory Summary, *supra* note 42.

55. 1982 Va. Acts, ch. 301, § 18.2-271; Statutory Summary, *supra* note 42.

56. VA. CODE ANN. § 18.2-271.1(a) (Repl. Vol. 1982). This subsection reads:

Any person convicted of a violation of § 18.2-266, or any ordinance of a county, city or town similar to the provisions thereof, or any second offense thereunder, may, with leave of court or upon court order, enter into an alcohol safety action program, or a driver alcohol rehabilitation program or such other alcohol rehabilitation program as may be 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. If such person has never entered into or been committed to a driver alcohol safety action program or driver alcohol rehabilitation program or similar rehabilitation or education program, in keeping with the procedures provided for in this section, and upon motion of the accused or his counsel, the court shall give mature consideration to the needs of such

of DWI was not required for referral to VASAP; referral was possible either upon a plea of guilty or upon the court's hearing evidence sufficient to establish guilt. Referral was not explicitly limited to first offenders, and there was a fee of \$200 for the program.<sup>57</sup>

Currently, a conviction for DWI must be entered on the record before the court can refer an offender to the VASAP program, and the fee for the program has been increased to \$250.<sup>58</sup> Also, upon a third conviction a person is ineligible for the VASAP program.<sup>59</sup>

## 2. The Restricted License

There was no provision for the issuance of a restricted drivers license prior to the 1982 legislation. Currently, a restricted license may be issued to any person referred to a VASAP program.<sup>60</sup> However, the license may be issued only for a) travel to and from VASAP, b) travel to and from the offender's place of employment, and c) travel during the offender's hours of employment where operation of a motor vehicle is necessary.<sup>61</sup>

## 3. Out-of-State Convictions

Under the previous statute, an out-of-state conviction for DWI was treated as a conviction for purposes of sentencing and license revocation. However, a person convicted in another jurisdiction could petition the court for referral to a VASAP program. Upon referral to a VASAP program, the privilege to drive was restored, conditioned upon completion of VASAP. If the VASAP program was completed, then the record of the out-of-state conviction was expunged.<sup>62</sup>

Currently, if the out-of-state conviction is a first conviction, the of-

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person in determining whether he be allowed to enter such program.

57. 1982 Va. Acts, ch. 301, § 18.2-271.1 (codified at VA. CODE ANN. § 18.2-271.1 (Repl. Vol. 1982)); Statutory Summary, *supra* note 42. *See supra* note 42.

58. 1982 Va. Acts, ch. 301, § 18.2-271.1; Statutory Summary, *supra* note 42. *See supra* notes 42, 51.

59. VA. CODE ANN. § 18.2-271 (Repl. Vol. 1982). *See supra* note 50.

60. The applicable subsection states:

(b1a) Whenever a person enters a program pursuant to this section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any or all of the following purposes: (i) travel to and from his place of employment; or (ii) travel to an alcohol rehabilitation program entered pursuant to this paragraph; or (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment.

VA. CODE ANN. § 18.2-271.1(b1a) (Repl. Vol. 1982).

61. *Id.*

62. 1982 Va. Acts, ch. 301, §§ 18.2-271.1(b1), 46.1-417. Statutory Summary, *supra* note 42. *See supra* note 42.

fender may petition the court for restoration of the privilege to drive. The court has the discretion to restore the privilege to drive, conditioned upon the completion of a VASAP program.<sup>63</sup> If the conviction is a second conviction within ten years, the revocation provision of section 18.2-271 of the Virginia Code<sup>64</sup> becomes operative. Then, the court may not suspend more than two years of the license revocation. Also, completion of a VASAP program does not expunge the out-of-state conviction from Division of Motor Vehicle records.<sup>65</sup>

#### IV. ANALYSIS: ARE THE DWI LAWS MORE STRICT?

It is obvious that the new DWI laws increase the maximum allowable punishments and fines in addition to providing for mandatory sentences and license suspension.<sup>66</sup> On their face the new laws appear more strict. However, a further look into the operation of the legal system is necessary to determine if these laws are indeed more stringent.

In determining if a new law is more strict than the previous law, a ma-

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63. The applicable subsection reads:

(b1) Any person who has been convicted in another state of the violation of a law of such state substantially similar to the provisions of § 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 and that upon successful completion of such program his privilege to operate a motor vehicle in this State be restored or, if unrevoked, that any order of the Commissioner of the Division of Motor Vehicles revoking such privilege be stayed. If the court shall find that such person would have qualified therefor if he had been convicted in this State of a violation of § 18.2-266, the court may grant the petition and may suspend the period of license suspension or revocation imposed pursuant to § 46.1-417. Such suspension of sentence shall be conditioned upon the successful completion of a program by the petitioner. If such person has previously been convicted of a violation under § 18.2-266 or the laws of any other state substantially similar thereto, the court may suspend not more than two years of the sentence of license suspension or revocation imposed. If the court subsequently finds that such person has violated any of the conditions set forth by the court, the court shall dispose of the case as if no program had been entered and shall impose a sentence of license suspension or revocation in accordance with the provisions of §§ 18.2-271 or 46.1-421 (a). A copy of the order granting the petition or subsequently revoking or suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner of the Division of Motor Vehicles.

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

VA. CODE ANN. § 18.2-271.1(b1) (Repl. Vol. 1982).

64. *Id.* § 18.2-271.

65. *Id.* § 46.1-417 (Repl. Vol. 1982) (Expungement provisions were deleted by the 1982 DWI legislation.).

66. *See supra* notes 42, 50.

for consideration is whether the legal system will enforce the new sanctions as written. If the legal system views the new sanctions as too severe, it will find ways to avoid convicting persons for DWI.<sup>67</sup> This means that both the legislation and the resulting convictions for DWI must be examined to determine if they will, in fact, result in stiffer penalties.<sup>68</sup> Since Virginia's new DWI laws have become effective only recently,<sup>69</sup> the findings from studies in other states will be utilized to make an analysis of the Virginia laws.<sup>70</sup>

### A. *Involuntary Manslaughter*

No studies were found that directly address the question of the drinking driver convicted of involuntary manslaughter. The new law increases the maximum allowable punishment, but whether the maximum will be utilized is a matter of conjecture. Studies do indicate, however, that both judges and juries are reluctant to inflict severe penalties for DWI when such penalties result in hardship.<sup>71</sup> Whether this attitude is carried over to include the drinking driver accused of involuntary manslaughter is not clear.<sup>72</sup>

A factor that may influence the imposition of stiffer penalties is a public outcry against the offense of DWI. It was such an outcry by organized groups that led to the passage of the new legislation.<sup>73</sup> It is likely that both judges and juries are sensitive to the mood of the public.<sup>74</sup> There-

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67. In studies conducted in other states, most courts regarded legislated penalties for DWI as too harsh. They exercised judicial ingenuity to avoid imposing legislative sanctions. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., No. DOT-HS-804-033, RESULTS OF NATIONAL ALCOHOL SAFETY ACTION PROJECTS II 20 [hereinafter cited as NHTSA II]. See NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., No. DOT-HS-803-361, EXECUTIVE SUMMARY OF FIVE ALCOHOL SAFETY ACTION PROJECTS' JUDICIAL SYSTEMS 4-6 (June, 1978) [hereinafter cited as NHTSA 1978]; Note, *Alcohol Abuse and the Law*, 94 HARV. L. REV. 1660, 1667 (1981).

68. See NHTSA 1978, *supra* note 67 and NHTSA II, *supra* note 67. Cf. Gaynes, *supra* note 20, at 29 (discussing the effect of severe penalties on convictions; conclusion based, however, on a low arrest rate of drinking drivers).

69. The DWI laws were effective July 1, 1982. 1982 Va. Acts, ch. 301.

70. See NHTSA 1978, *supra* note 67, at 2-7; NHTSA II, *supra* note 67, at 20; ALCOHOL AND HIGHWAY SAFETY, *supra* note 1, at 39.

71. See NHTSA II, *supra* note 67, at 20; ALCOHOL AND HIGHWAY SAFETY, *supra* note 1, at 39; Note, *supra* note 67, at 1677.

72. An inference may be drawn from the following that maximum punishments may not be applied. An offender in Henrico County, Virginia, was found guilty of four counts of involuntary manslaughter. The offender had been DWI, and a subsequent automobile crash resulted in the deaths of four persons. The maximum penalty of twenty years (accident occurred prior to implementation of new laws) was imposed, but one-half of the sentence was suspended. This was "the harshest sentence in recent memory for a Henrico drunken-driving case." Richmond Times-Dispatch, Aug. 21, 1982, at 1, col. 1.

73. See *supra* note 40.

74. See generally Gaynes, *supra* note 20; NHTSA II, *supra* note 67. The attitude of prosecutors toward DWI is indicated by a recent charge of second-degree murder, rather than

fore, a sustained public outcry may generate stiffer penalties for actions that result from drinking and driving.

## B. *Increased Maximum Punishment and Mandatory Jail Sentences*

### 1. Increased Maximum Punishment

The new provisions in Virginia's laws authorizing penalties for conviction of DWI include both an increase in the maximum allowable punishment and mandatory jail sentences for second and third convictions.<sup>75</sup> The former remains within the discretion of the judge or jury; the latter is seemingly removed from this discretion.

Studies from other jurisdictions indicate that most courts regard legislated penalties for DWI as too harsh.<sup>76</sup> This same attitude is found in juries, even though the reluctance to convict runs counter to stated public desires to toughen penalties.<sup>77</sup> The full range of statutory penalties is seldom applied, thus making many penalties and their degree of harshness irrelevant.<sup>78</sup>

Other findings indicate that of those persons actually prosecuted for DWI approximately one-half are found guilty. Furthermore, fines imposed are at the lower end of the range permitted; and jail sentences averaged only one and one-half weeks per conviction.<sup>79</sup> A nationwide mail survey indicated that the usual punishment for DWI is a fine, and that jail sentences are infrequent.<sup>80</sup>

These findings tend to indicate that even when the initial legislation controlling DWI is toughened, reluctance on the part of the judge and jury to impose severe penalties may diminish the harshness.<sup>81</sup> Unless the attitudes of the judiciary and the public toward DWI change, harsher laws will have little effect on penalties administered for DWI.<sup>82</sup>

the usual charge of involuntary manslaughter, being lodged against a driver who was DWI and whose actions resulted in the death of three others. The prosecutors said that "they were influenced by the growing outcry about the death toll caused by drunk drivers" when they chose to institute the harsher charge against the driver. *Richmond Times-Dispatch*, Sept. 18, 1972, at 1, col. 6. The prosecutors prevailed in these charges against the driver, even though the harsher charge required proof that the driver's actions reflected malice in the "deliberate use of a deadly weapon." *Id.* at 4, col. 1.

75. See *supra* notes 42, 50.

76. NHTSA II, *supra* note 67, at 20.

77. Note, *supra* note 67, at 1677 n.140.

78. NHTSA 1978, *supra* note 67, at 4.

79. ALCOHOL AND HIGHWAY SAFETY, *supra* note 1, at 39.

80. *Id.*

81. See *supra* note 67 and accompanying text.

82. Gaynes, *supra* note 20, at 28; Little, *Administration of Justice in Drunk Driving Cases*, 58 A.B.A. J. 950, 953 (1972). See NHTSA II, *supra* note 67, at 28.

## 2. Mandatory Jail Sentences

Mandatory jail sentences for DWI are certainly more strict than previous penalties; however, such harsh punishments, generally, are not uniformly enforced. In other localities where mandatory jail sentences have been instituted, DWI is increasingly plea bargained to a lesser charge.<sup>83</sup> The threat of mandatory sentences encourages requests for trials, thus clogging court calendars, and bringing increased reliance on plea bargaining to clear the calendars.<sup>84</sup>

The problem of overcrowded jails is exacerbated by mandatory sentences. Jail space in some states, including Virginia, is already inadequate.<sup>85</sup> And one must not overlook the fact that the daily costs of maintaining convicted drunk drivers in jail is burdensome to the taxpaying public.

When judicial discretion is removed and the penalties are severe, judges tend to become innovators. Such innovations include withholding conviction and requiring stricter supporting evidence for conviction as well as an increasing use of plea bargaining.<sup>86</sup> Should the new DWI laws be considered too severe by the Virginia judiciary, the possibility exists for judicial innovation to avoid these penalties. Certainly stricter penalties which are awarded by the judiciary will fail to meet the expectations of the promoters of such legislation.

### C. *Recordation of Convictions and the Restricted License*

#### 1. Interrelationship of the Sections

There are two aspects of the new DWI laws that may lead to a more strict application than under the old laws. First, section 18.2-271.1(a) of the Virginia Code<sup>87</sup> requires that a person must be *convicted* of violating the DWI section before the person may enter a VASAP program.<sup>88</sup> Second, the person may be issued a restricted license to drive only on admission to such a program.<sup>89</sup> The interrelationship of these statutory sections may encourage the judiciary to enforce the DWI section because DWI is a prerequisite to issuance of a restricted license.

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83. NHTSA II, *supra* note 67, at 25.

84. *Id.* See Gaynes, *supra* note 20, at 29. Julian Hickman stated the expectation in Virginia was crowded court dockets because persons would be seeking either to avoid a class one misdemeanor conviction since it affects employee security clearances, or to avoid the mandatory jail sentence. This had not occurred by the date of the interview, Aug. 3, 1982. Interview with Julian Hickman, *supra* note 30.

85. Gaynes, *supra* note 20, at 29; Note, *Prison Overcrowding as Cruel and Unusual Punishment in Light of Rhodes v. Chapman*, 16 U. RICH. L. REV. 621, 645 (1982).

86. NHTSA 1978, *supra* note 67, at 4.

87. VA. CODE ANN. § 18.2-271.1(a) (Repl. Vol. 1982).

88. *Id.* § 18.2-271.1(a). See *supra* note 56.

89. *Id.* § 18.2-271.1(b1a). See *supra* note 60.

## 2. Recordation of Convictions

To trigger the harsher sanctions for subsequent convictions of DWI it is necessary that the prior offense be proven.<sup>90</sup> The previous Virginia statute did not require entry of a conviction on the records prior to a referral to VASAP.<sup>91</sup> As a result, many offenders were able to complete the program and enter a plea to a lesser offense, or be found not guilty.<sup>92</sup> The usual result of this practice was that record systems were undermined and the repeat offender was often treated as a first time offender rather than as a recidivist.<sup>93</sup>

This former practice of the Virginia judiciary is not possible under the new laws.<sup>94</sup> Under the new section, a conviction must be recorded if a judge wants to place an offender in a VASAP program. This in turn allows the courts to recognize recidivism and to treat offenders accordingly. Of course, if it so chooses, the judiciary still has the opportunities discussed earlier to circumvent the DWI conviction.<sup>95</sup>

## 3. The Restricted License

The courts show extreme sensitivity to external sanctions that result from a DWI conviction.<sup>96</sup> Examples of these external sanctions which the

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90. *Calfee v. Commonwealth*, 215 Va. 253, 208 S.E.2d 740 (1974).

91. 1982 Va. Acts, ch. 301, § 18.2-271.1(a). See Letter from Gerald L. Baliles, Attorney General of Virginia, to the Honorable James H. Harvell, Judge (June 23, 1982) (an Opinion of the Attorney General discussing VA. CODE ANN. §§ 18.2-271 and -271.1 (Repl. Vol. 1982)) [hereinafter cited as Op. Att'y Gen.].

92. VASAP FACT SHEET, *supra* note 2, at 4-3.

93. NHTSA 1978, *supra* note 67, at 5, 7.

94. VA. CODE ANN. § 18.2-271.1(b) (Repl. Vol. 1982), reads:

Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, the court shall impose sentence as authorized by §§ 18.2-270 and 18.2-271. Upon a finding that a person so convicted is eligible for participation in the program described herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to such program. The court may then proceed to issue an order in accordance with paragraph (b1a) of this section, if the court finds that the person so convicted is eligible for a restricted license. If the court finds that a person is not eligible for such program or subsequently that such person has violated, without good cause, any of the conditions set forth by the court in entering the program, the court shall dispose of the case as if no program had been entered, in which event the revocation provisions of §§ 18.2-271 and 46.1-421(a) shall be applicable to the conviction. The court shall, upon final disposition of the case, send a copy of its order to the Commissioner of the Division of Motor Vehicles. If such order provides for the issuance of a restricted license, the Commissioner of the Division of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any such disposition shall be allowed as provided by law. The time within which an appeal may be taken shall be calculated from the date of the final disposition of the case or any motion for a rehearing, whichever is later.

95. NHTSA 1978, *supra* note 67, at 4. See *supra* text accompanying note 86.

96. NHTSA II, *supra* note 67, at 29.

judiciary cannot control are increased insurance rates, defense attorney fees, fees for DWI school, and loss of job or income due to revocation of a drivers license.<sup>97</sup> Judges consider the loss of driving privileges to be an extreme punishment. In cases "[w]here a person needed a license to work, it was almost certain that he or she would *not* lose that license."<sup>98</sup>

Studies indicate that the most effective weapon the court has in its arsenal to gain cooperation from a drinking driver is the threat to suspend driving privileges.<sup>99</sup> The courts also regard the power to withdraw driving privileges as one of their most important weapons.<sup>100</sup> The court is thus placed in a quandry, as conviction of DWI sets in action the above external sanctions, which are beyond the control of the court. Therefore, to retain control of the sanctions imposed on the offender, the court needs to take action against the privilege to drive through the less burdensome sanction of the restricted license.

As part of the new DWI laws in Virginia, section 18.2-271.1(b1a)<sup>101</sup> of the Virginia Code allows the judge to issue a restricted license to one convicted of DWI. The person must be a first or second time offender, convicted of DWI, and must be entered in a VASAP program.<sup>102</sup>

The restricted license is an alternative to revocation, a sanction considered so severe that it will not be enforced by the judiciary.<sup>103</sup> The restricted license thus serves as a satisfactory compromise. The judiciary retains the discretion necessary to administer justice to individual offenders<sup>104</sup> if the offender meets the conditions of being a first or second time offender convicted of DWI and is entered in a VASAP program. The result may be more uniform action against the driving privilege of drinking drivers.<sup>105</sup> The judiciary can convict for DWI without completely revoking the privilege to drive. This compromise, coupled with the conditions precedent to issuance of a restricted license, may result in more convictions for DWI.

Some interest has already been displayed by the Virginia judiciary con-

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97. *Id.*

98. NHTSA 1978, *supra* note 67, at 5.

99. *Id.* at 6. *See* NHTSA II, *supra* note 67, at 29. The operation of automobiles on state highways is not a natural right, i.e. a constitutional right. It is a conditional privilege that may be revoked under the state's police power. *Commonwealth v. Ellett*, 174 Va. 403, 4 S.E.2d 762 (1939).

100. NHTSA 1978, *supra* note 67, at 6.

101. VA. CODE ANN. § 18.2-271.1(b1a) (Repl. Vol. 1982). *See supra* note 60.

102. *Id.* § 18.2-271.1(a), (b1a). *See supra* notes 56, 60.

103. *See* Op. Att'y Gen. (June 23, 1982), *supra* note 91; Little, *supra* note 82, at 953; NHTSA II, *supra* note 67, at 29.

104. *See* Giorno, *Sentencing in Criminal Cases: How Great the Need for Reform?*, 13 U. RICH. L. REV. 899, 912 (1979). *See generally* Young, *Some Reflections on Criminal Sentencing*, 12 U. TOL. L. REV. 475 (1981).

105. *See* NHTSA II, *supra* note 67, at 29.



cerning the power of a court to issue a restricted license.<sup>106</sup> It is clear that a restricted license may be issued for a first offense of DWI; however, it is not clear, on the face of the statute, whether a restricted license may be issued for a second offense. For a second offense, the court may suspend two of the three years, or one of the two years, of the mandated time for license revocation.<sup>107</sup> There are no restrictions placed on a second offender that preclude the meeting of conditions precedent<sup>108</sup> necessary for the issuance of a restricted license.

An Opinion of the Attorney General<sup>109</sup> addresses this question. It reads, in part:

[T]he Court may, in its discretion for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any or all of the purposes enumerated therein. There is nothing in this new paragraph . . . which precludes a court from issuing a restricted license for the year the Court is not authorized to suspend pursuant to § 18.2-271.<sup>110</sup>

Due to the lack of legislative history on the new DWI laws,<sup>111</sup> it is not possible to state whether such an outcome was intended by the General Assembly. However, it now appears that both first and second offenders convicted of DWI may be issued a restricted license, at the discretion of the court.

#### D. *Out-of-State Convictions*

The changes in section 18.2-271(b1)<sup>112</sup> of the Virginia Code governing out-of-state DWI convictions center mainly on recordation of the convictions. Under the previous statute, a person convicted out-of-state could petition the court for VASAP treatment, receive such treatment, and then have the out-of-state convictions expunged from Virginia Division of Motor Vehicles (DMV) records.<sup>113</sup> As expungement of the record is not possible under the new legislation,<sup>114</sup> the legal system has cognizance of the person as a previous DWI offender. For any subsequent offenses, the person is subject to harsher sanctions allowable for second or third convictions. In this sense, the law is harsher.

106. A question concerning the issuance of a restricted license was raised by the Honorable James H. Harvell. Op. Att'y Gen., *supra* note 91.

107. VA. CODE ANN. § 18.2-271 (Repl. Vol. 1982). *See supra* note 50.

108. VA. CODE ANN. § 18.2-271.1 (b1a) (Repl. Vol. 1982). *See supra* notes 60, 104-05 and accompanying text.

109. The weight of an Attorney General's Opinion is not binding on a court, but it is of the most persuasive character and entitled to due consideration. *Barber v. City of Danville*, 149 Va. 418, 141 S.E. 126 (1928).

110. Op. Att'y Gen. (June 23, 1982), *supra* note 91, at 4.

111. *See supra* note 30.

112. VA. CODE ANN. § 18.2-271.1(b1) (Repl. Vol. 1982). *See supra* note 63.

113. 1982 Va. Acts, ch. 301, § 46.1-417.

114. VA. CODE ANN. § 46.1-417 (Cum. Supp. 1982).

Yet, the general thrust of the changes seemingly is, however, to afford parity of treatment to Virginia citizens convicted under out-of-state laws which are harsher than Virginia's. As an example, one provision allows a judge to restore the privilege to drive when it has been taken away by an out-of-state court.<sup>115</sup> Therefore, the only change concerning an out-of-state conviction that seems more strict is the loss of ability to expunge the DMV record following completion of a VASAP program.<sup>116</sup>

#### V. CONCLUSION

The 1982 legislation enacted by the Virginia General Assembly creates the potential for harsher punishment of persons convicted of DWI. The new provisions include an increase in the maximum allowable punishments, and in the amount of time for which a license can be suspended, and provide mandatory jail sentences for subsequent convictions. Studies from other states indicate, however, that the legal system will not enforce sanctions it considers too severe. The new laws will, of course, be harsher only if they are enforced by the legal system.

Other provisions in the 1982 legislation provide a conduit for harsher treatment of DWI offenders. These provisions require a conviction prior to referral to a VASAP program and allow the issuance of a restricted license upon entry in the program. The recordation of convictions allows the legal system to identify recidivists and the restricted license allows a judge to convict for DWI, while allowing the offender to use the restricted license for employment purposes. These provisions should overcome the judiciary's previous reluctance to convict of DWI and to impose the drivers license suspension sanction.

The problem of DWI in Virginia is considered a pervasive problem that requires further action. Such action is anticipated based on the creation of a *Governor's Task Force to Combat Drunk Driving*. The membership of the task force is comprised of legislators, law enforcement officials, medical personnel, and citizens representing groups that lobbied for the new DWI laws. If the high interest in DWI legislation is maintained, the possibility exists for new, even stricter, DWI laws for Virginia.

*Eddie W. Wilson*

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115. VA. CODE ANN. § 18.2-271.1(b1) (Repl. Vol. 1982). See *supra* note 63.

116. See VA. CODE ANN. § 46.1-417 (Cum. Supp. 1982). See *supra* note 65.

