REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

The Reorganization and Restructuring of Title 18.2

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 15

COMMONWEALTH OF VIRGINIA
RICHMOND
2004

COMMONWEALTH of VIRGINIA

Virginia State Crime Commission

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April 20, 2004

TO: The Honorable Mark Warner, Governor of Virginia

And

Members of the Virginia General Assembly

The 2001 General Assembly, through House Joint Resolution 687, requested the Virginia State Crime Commission study the organization of and inconsistencies in Title 18.2 of the Code of Virginia, including the level and extent of and the rationale for the penalties set forth therein, and make recommendations for any necessary revisions.

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledges their input into this report.

Respectfully submitted,

David B. Albo
Chairman

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION

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Rich Savage, Deputy Attorney General, Office of the Attorney General

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I. Authority

The *Code of Virginia*, § 30-156, authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Additionally, the Commission is to study matters "including apprehension, trial and punishment of criminal offenders." Section 30-158(3) provides the Commission the power to "conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156. . .and formulate its recommendations to the Governor and the General Assembly."

Using the statutory authority granted to the Crime Commission, the staff conducted a study on the organization and inconsistencies in Title 18.2 of the *Code of Virginia.*

II. Executive Summary

During the 2001 Session of the Virginia General Assembly, Delegate Robert F. McDonnell introduced House Joint Resolution 687 (HJR 687)[1], directing the Virginia State Crime Commission to study the organization of and inconsistencies in Title 18.2 of the *Code of Virginia,* including the level and extent of and the rationale for the penalties set forth therein. Specifically, the resolution directs the Virginia State Crime Commission to (i) review the proportionality of the criminal penalties throughout the *Code of Virginia;* (ii) make recommendations for necessary amendments; and, (iii) recommend whether or not Title 18.2 should also be revised at this time. The Crime Commission reported its written findings and recommendations to the Governor and the 2004 Session of the General Assembly. As a result of the study effort, the following recommendations were made concerning the reorganization and restructuring of Title 18.2 of the *Code of Virginia:*

Recommendations

Recommendation 1: The Virginia State Crime Commission recommends the creation of a new penalty structure in Title 18.2 which will encompass seven classes of felony offenses.

Recommendation 2: The Virginia State Crime Commission recommends the following amendments to define terms in Title 18.2 of the *Code of Virginia:*

> *"Armed with a deadly weapon" means the possession of any weapon described in subsection A of 18.2-308 or any other instrumentality whatsoever that under the circumstances in which it is used, attempted to be used or threatened to be used, would likely cause death or serious bodily injury to a human being.*
>
> *"Serious bodily injury" shall means bodily injury that involves (i)*

[1] House Joint Resolution 687 (2001). See Attachment 1.

a substantial risk of death, (ii) physical pain that is chronic or experienced over a protracted period of time, (iii) protracted disfigurement, or (iv) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

Recommendation 3: The Virginia State Crime Commission recommends the following amendments in Title 18.2 of the *Code of Virginia* concerning the statutory restructuring of felony offenses:

Robbery

- First Degree – Class 1 Felony
  Involves being armed with a deadly weapon, AND serious bodily injury
- Second Degree – Class 2 Felony
  All other robberies

Burglary

- First Degree – Class 1 Felony
  Burglary while armed with a deadly weapon AND causing serious bodily injury
- Second Degree – Class 2 Felony
  Burglary while armed with a deadly weapon OR causing serious bodily injury
- Third Degree – Class 3 Felony
  Burglary with the intent to commit murder, rape, robbery or arson
- Fourth Degree – Class 5 Felony
  Burglary with the intent to commit any other felony, or larceny, or assault and battery
- Fifth Degree – Class 6 Felony
  Burglary with the intent to commit any other misdemeanor

Larceny

- First Degree Grand Larceny – Class 3 Felony
  Chattel of $25,000 or more
- Second Degree Grand Larceny – Class 5 Felony
  Chattel of $10,000 – $24,999
  Theft from a person of $5 or more
  Theft of an automobile, any value less than $25,000
- Third Degree Grand Larceny – Class 6 Felony
  Chattel of $500 - $9,999
  Credit card theft
  Firearm(s) theft (unless value of firearm warrants higher degree)

Felony Sex Crimes

- Taking indecent liberties with a child by a person in a custodial or supervisory relationship – Class 6 Felony (previously a Class 1 misdemeanor)

- Eliminate marital exceptions for forcible sodomy and object sexual penetration

Assault

Expect for Second Degree Assault, there are no changes in the penalty structures for assault offenses.

- First Degree – Class 1 Felony
  Aggravated malicious wounding/bodily injury, including injury that causes the involuntary termination of a pregnancy
- Second Degree – Class 2 Felony
  Malicious wounding/bodily injury of law enforcement officer, firefighter, etc; Malicious wounding by means of acid, lye, or caustic substance
- Third Degree – Class 3 Felony
  Malicious wounding/bodily injury; Poisoning or attempting to poison; Adulterating food, drink, cosmetics, etc. with the intent to cause injury
- Fourth Degree – Class 4 Felony
  Destroying a facility that contains infectious biological agents or radioactive substances, with the intent to cause injury; Manufacturing, selling or distributing an infectious biological agent or radioactive substance with the intent to cause injury
- Fifth Degree – Class 5 Felony
  Possession of an infectious biological agent or radioactive substance with the intent to cause injury; Bodily injuries caused by prisoners or probationers
- Sixth Degree – Class 6 Felony
  Unlawful wounding/bodily injury; Unlawful wounding/bodily injury of law enforcement officer; Intent to injure by throwing object from a height; DUI maiming; Unlawful wounding by acid, lye, or caustic substance; Shooting, stabbing, or wounding in the commission of a felony; Hate crime assault and battery which results in bodily injury; Assault and battery on a law enforcement officer; Disarming a law enforcement officer of his firearm; Third conviction for domestic assault and battery

Arson[2]

- First Degree – Class 1 Felony
  Arson of a building or structure that involves serious bodily injury
- Second Degree – Class 2 Felony
  Arson of an occupied dwelling or church
- Third Degree – Class 3 Felony
  Arson of a public building, not a dwelling or church, when

[2] Note: under the current law of arson, "occupied" and "a person inside" do not mean the same thing; this proposal will not change this substantive law.

there is a person inside

- Fourth Degree – Class 4 Felony
  Arson of a public building, not a dwelling or church, when no persons are inside; Arson of an unoccupied dwelling or church; arson of any other building or structure, when no persons are inside, damage of $1000 or more; Arson of personal property, or crop, damage of $1000 or more
- Class 1 Misdemeanor
  Arson of any other building, when no persons are inside, damage of less than $1000; Arson of personal property, or crop, damage of less than $1000

Abduction[3]

- First Degree – Class 1 Felony
  Abduction with the intent to extort money, defile the victim, or if the victim is under 1 years of age, for the purpose of prostitution
- Second Degree – Class 3 Felony
  Abduction by a prisoner
- Third Degree – Class 5 Felony
  All other abductions except those involving parental abductions

Recommendation 4: The Virginia State Crime Commission recommends amendments to two statutes that have been "little used" in the past ten years:

- § 18.2-345 would become - Lewd and lascivious conduct in a public place.
- § 18.2-349 would become - Using vehicles to promote prostitution.

Recommendation 5: The Virginia State Crime Commission recommends repeal of thirteen statutes that have been "little used" in the past ten years:

- § 18.2-111.1. Conversion of military property by person discharged from national guard or naval militia.
- § 18.2-114. Sale, etc., of goods, etc., of another and failure to pay over proceeds.
- § 18.2-123. Dogs not permitted at large in Capitol Square.
- § 18.2-161. Trespassers forbidden to jump on or off railroad cars or trains.
- § 18.2-202. False statements by purchaser of real property as to use for personal residence.
- § 18.2-203. False statement or willful overvaluation of property for purpose of influencing lending institution.
- § 18.2-211. Unlawful use of words "Official Tourist Information" or similar language.
- § 18.2-351. Commitment of persons convicted of certain offenses; investigation and report; reduction of period.
- § 18.2-352. Examination and investigation of such persons; reports to committing court.

[3] All attempts to commit abduction, and all accessories to an abduction, shall be punished according to §18.2-26 or §18.2-18.

- § 18.2-353. Probation or release of such persons.
- § 18.2-358. Detaining male or female in bawdy place against his or her will.
- § 18.2-367. Conspiring to cause spouse to commit adultery.
- § 18.2-386. Showing previews of certain motion pictures.

Recommendation 6: The Virginia State Crime Commission recommends amendments throughout the *Virginia Code* to use consistent language when describing mandatory minimum criminal sentences. A definition of mandatory minimum punishment will be added to the *Code* and language in various sections throughout the *Code* is conformed. The recommended definition is:

> § 18.2-12.1. Mandatory minimum punishment; definition.
> *"Mandatory minimum" wherever it appears in this Code means, for purposes of imposing punishment upon a person convicted of a crime, that the court shall impose the entire term of confinement, the full amount of the fine and the complete requirement of community service prescribed by law. The court shall not suspend in full or in part any punishment described as mandatory minimum punishment.*

Recommendation 7: The Virginia State Crime Commission recommends the following statutes be relocated to Title 8.01 (Civil Procedure and Remedies) because they are procedural statutes for civil cases:

- § 18.2-185. Evidence and presumptions in malicious prosecution actions after issuance of bad check.
- § 18.2-105. Exemption from civil liability in connection with arrest or detention of suspected person.

Recommendation 8: The Virginia State Crime Commission recommends the following statute be relocated to §48-16 (Nuisances) because it is not a criminal statute:

- § 18.2-258. Certain premises deemed common nuisance; penalty.

Recommendation 9: The Virginia State Crime Commission recommends the following eight statutes be relocated to Title 15.2 (Counties, Cities and Towns) because they authorize local governments to enact ordinances or to regulate certain behaviors and they are not criminal statutes.

- § 18.2-138.1. Willful and malicious damage to or defacement of public or private facilities; penalty.
- § 18.2-287. Counties may regulate carrying of loaded firearms on public highways.
- § 18.2-287.1. Transporting a loaded rifle or shotgun.
- § 18.2-308. Personal protection; carrying concealed weapons; when lawful to carry. *(Only one sentence of this section is moved.)*
- § 18.2-340.32. Authority of local governments; proceeds exempt from local taxation.
- § 18.2-389. Adoption of ordinances prohibiting obscenity.
- § 18.2-432. Counties, cities and towns authorized to regulate minors in public places of amusement.

- § 18.2-433. Regulation of dance halls by counties, cities and towns.

Recommendation 10: The Virginia State Crime Commission recommends the following 28 statutes be relocated to Title 19.2 (Criminal Procedure) because they involve forfeiture proceedings and are criminal offenses:

- § 18.2-246.13. Illegal cigarettes.
- § 18.2-246.14. Counterfeit cigarettes.
- § 18.2-283.1. Carrying weapon in courthouse.
- § 18.2-287.4. Carrying weapon in public place.
- § 18.2-308. Forfeiture of illegally concealed firearm.
- § 18.2-308.1:2. Forfeiture of firearm possessed by person adjudicated mentally incapacitated.
- § 18.2-308.1:3. Forfeiture of firearm possessed by involuntary committed person.
- § 18.2-308.1:4. Forfeiture of firearm possessed by persons subject to protective order.
- § 18.2-308.2. Firearm illegally possessed by felon.
- § 18.2-308.2:01. Firearms possessed by aliens.
- § 18.2-308.2:1. Selling firearms to felons, aliens, mentally incapacitated.
- § 18.2-308.4. Possession of firearms while possessing controlled substances.
- § 18.2-308.5. Possession of plastic firearm.
- § 18.2-308.7. Possession of firearms by persons under 18.
- § 18.2-374.1:1. Possession of child pornography.
- § 18.2-46.9. Property involved in terrorist attack.
- § 18.2-110. Automobiles used in connection with prostitution, grand larceny, or robbery.
- § 18.2-152.16. Property involved with computer crime.
- § 18.2-190.7. Unlawful communication devices.
- § 18.2-246.4. Property involved with drug dealing.
- § 18.2-249. Property involved illegal drug transactions.
- § 18.2-253. Disposal of controlled substances/paraphernalia.
- § 18.2-253.1. Disposal of controlled substances before trial.
- § 18.2-253.2. Law enforcement to maintain custody of controlled substances.
- § 18.2-265.4. Drug paraphernalia.
- § 18.2-310. Weapons used in commission of criminal offenses.
- § 18.2-336. Devices used in illegal gambling.
- § 18.2-374.2. Equipment used to produce child pornography.

Recommendation 11: The Virginia State Crime Commission recommends the following statutes be amended to comply with the Lawrence v. Texas decision:

- a new statute, § 18.2-361.1, be added, to criminalize sodomy that occurs in a public place.
- § 18.2-345, co-habitation, be amended to limit its application to "open and gross" lewdness in a public place.

- §§ 18.2-370, 370.1 and 371 be amended to ensure that minors are protected from acts of carnal knowledge carried out by adults.
- § 18.2-387.2 be created to make a Class 1 misdemeanor crime for carnal acts while incarcerated in a correctional facility.
- § 18.2-370.1 be amended to create a new offense; carnal knowledge of a minor by a custodian or supervisor would be a Class 6 felony (1-5 years).

Recommendation 12: The Virginia State Crime Commission will sponsor legislation to study Commonwealth's Attorneys in the Commonwealth. In particular, the study resolution will direct the Crime Commission to examine:

- workload in Commonwealth's Attorney offices;
- training and technical support for Commonwealth' Attorneys;
- opportunities for continuing legal education;
- reasonable case loads per attorney;
- ability of Commonwealth's Attorney offices to hire and retain staff;
- comparison of state support for Virginia's Commonwealth's Attorneys compared to support in other states; and
- the appropriate role of localities in providing support for prosecutorial services.

Recommendation 13: The Virginia State Crime Commission will sponsor a resolution specifying additional initiatives to be conducted prior to the July 1, 2005 implementation date for the substantive penalty adjustments to Title 18.2 (modifications to sentencing guidelines, training, form revisions, etc.). The Crime Commission will work with the Virginia Criminal Sentencing Commission and the Executive Secretary of the Supreme Court on the initiatives.

III. Methodology

The Virginia State Crime Commission formed a 22 person sub-committee and a technical advisory workgroup to conduct the Title 18.2 study. The sub-committee met 11 times since 2001 and the technical advisory group 17 times to address the issues in the study mandate. The sub-committee included:

House Courts of Justice Committee Members
Delegate David B. Albo*
Delegate Robert F. McDonnell*
Delegate Ward L. Armstrong
Delegate H. Morgan Griffith*
Delegate Robert Hurt
Delegate Terry G. Kilgore*
Delegate Kenneth R. Melvin*
Delegate Brian J. Moran*

Senate Courts of Justice Committee Members
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Senator Thomas K. Norment, Jr.*
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Honorable Michael E. McGinty (James City)
Honorable William G. Petty (Lynchburg)[4]

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Mr. Rich Savage, Deputy Attorney General (Attorney General's Office)

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Mr. G. Stewart Petoe, Director of Legal Affairs, VSCC
Ms. Jessica D. French, Senior Staff Attorney, DLS
Mr. James C. Creech, Ph.D., Research Unit Manager, VCSC
Ms. Meredith Farrar Owens, Associate Director, VCSC
Ms. Carolyn A. Williamson, Data Quality Control Associate, VCSC

The Title 18.2 Sub-Committee voted from the beginning of the study to organize Title 18.2 in a consistent manner by establishing seven study goals and objectives:

- Classify unclassified offenses and degree penalty structures where appropriate;
- Separate each crime into a separate statute;
- Eliminate redundant and duplicative statutes;
- Consider eliminating statutes that have been little used or not used in the past 10 years;
- Move procedural and inappropriately placed statutes from Title 18.2 to appropriate titles of the *Code*;
- Do not consider elimination of statutes enacted within the past five years; and,
- Focus on conduct versus result of offenses when classifying offense elements and penalties.

In examining the appropriateness of penalties in Title 18.2, the sub-committee was to:

1) Determine if punishment ranges for each crime are logical and consistent;

[4] Also a member of the Crime Commission.

2) Consider whether normative changes to the elements of the crimes should be made; and,
3) Consider organizing felony offenses into degrees of punishment.

The sub-committee utilized data from the Pre-Sentence Investigation Data Base for felony offense convictions to determine appropriate aggravating factors for punishment enhancement and punishment ranges for felony offense categories.

IV. Background

During its 2001 session, the General Assembly adopted House Joint Resolution (HJR) 687, directing the Virginia State Crime Commission to study the organization of and inconsistencies contained in Title 18.2 of the *Code of Virginia*, including the level and extent of criminal penalties. The criminal *Code* was last examined during a recodification more than 25 years ago. In the nearly three decades since that recodification, thousands of pieces of legislation have been passed into law. New crimes have been defined and penalties have been modified that reflect new technologies, scientific advances, and changing public priorities. A review of the criminal penalties in the current *Code* reveals inconsistencies in the weight of penalties when viewed as an overall scheme. In addition, many criminal penalties are defined in other titles of the *Code*, while many procedural statutes contained in Title 18.2 would be more appropriately placed elsewhere in the *Code*.

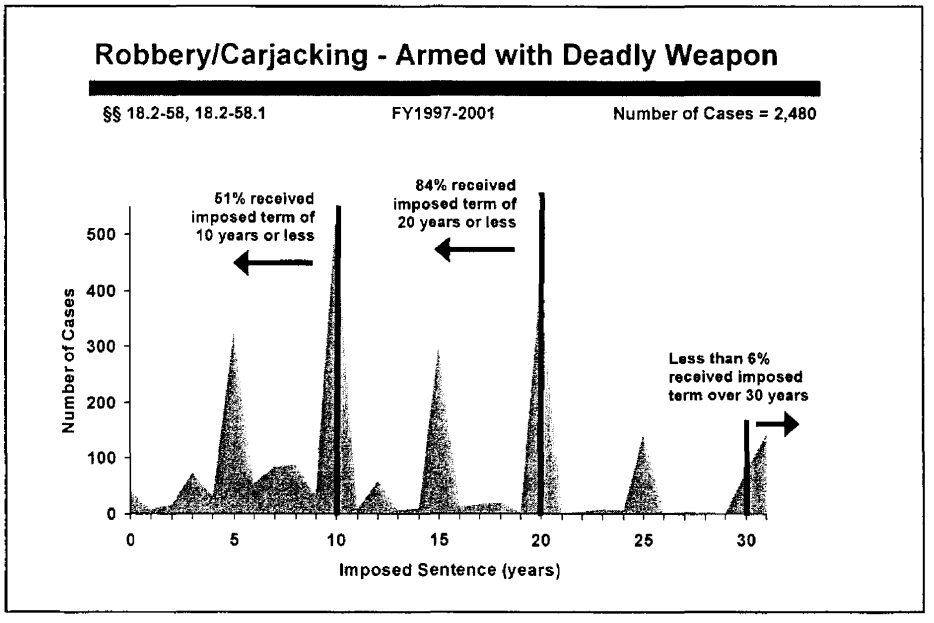
In response to the legislative mandate, the Virginia State Crime Commission initiated a thorough examination of the organizational structure of Title 18.2 and the punishment scheme of the criminal *Code*. During 2002 and 2003, the Virginia Criminal Sentencing Commission provided technical assistance for this multi-faceted project by furnishing a wide array of conviction and sentencing data. In addition, the Sentencing Commission's Executive Director served as an appointee on the Crime Commission's Title 18.2 Sub-committee. This report contains the findings of this enormous and complex review of the *Code*, as well as an analytical explanation of the Crime Commission's recommendations, to the 2004 General Assembly.

In developing its proposals, the Crime Commission's Title 18.2 Sub-committee examined conviction and historical sentencing practices for a large number of offenses. A summary of the data reviewed by the Sub-committee follows. The data below represents felony cases sentenced under Virginia's no-parole/truth-in-sentencing provisions during the period from fiscal year (FY) 1997 through FY2001. Data reflect cases involving one count of the specified offense where the offense was the primary (or most serious) offense in the case. Sentencing data reflect the sentence imposed (prior to any suspended time) for the specified offense and do not include sentences for other offenses at conviction; cases missing this type of detailed sentencing information are not reflected in the analysis. The analysis includes attempted and conspired offenses, which represent approximately 2% of cases overall.

Robbery

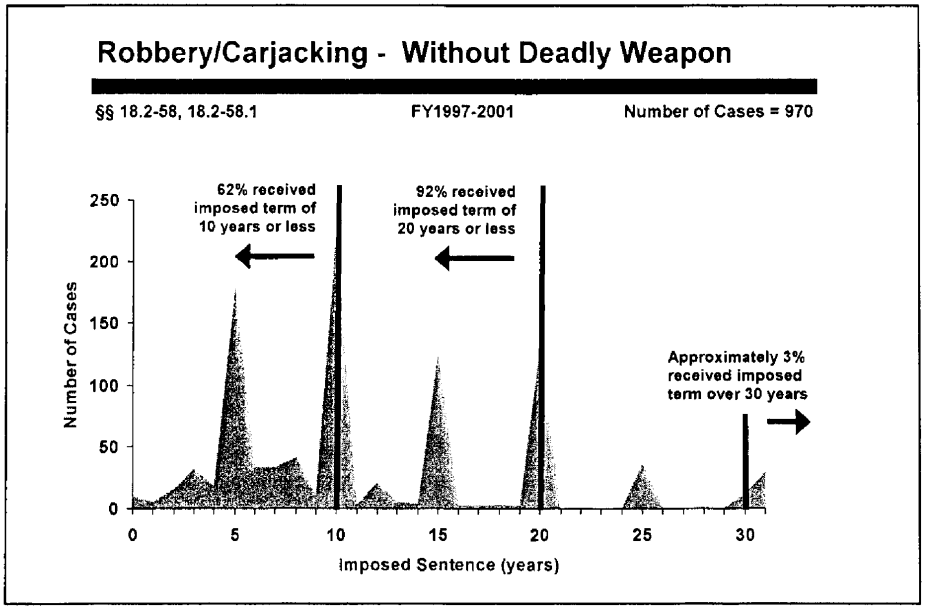
Currently, in the *Code of Virginia*, robbery (§18.2-58) is considered an unclassed felony because the *Code* specifies a penalty for this crime that does not fall into one of the established six classes of felony penalty ranges. A completed act of robbery is punishable by imprisonment ranging from five years to life. Carjacking, also an unclassed felony, is defined separately in the *Code* (§18.2-58.1), and is punishable by 15 years to life in prison. While the statutory penalty ranges for robbery and carjacking are broad, more than half (51%) of all robbery and carjacking cases committed with a deadly weapon result in an imposed sentence (before any suspended time is taken away) of ten years or less (Figure 1). Approximately 84% of offenders convicted of robbery or carjacking while armed receive an imposed term of 20 years or less. Although the maximum penalty for robbery is life imprisonment, few offenders convicted of armed robbery/carjacking (6%) receive an imposed sentence of over 30 years under Virginia's truth-in-sentencing/no-parole system.

Figure 1



Robbery and carjacking committed without a deadly weapon typically receive shorter sentences than those crimes committed with a deadly weapon. In cases of unarmed robbery and carjacking, nearly two of three offenders (62%) receive an imposed sentence of ten years or less (Figure 2). In nearly all (92%) cases of robbery and carjacking committed without a deadly weapon, the judge imposed a sentence of 20 years or less. Approximately 3% of unarmed offenders were given a term over 30 years.

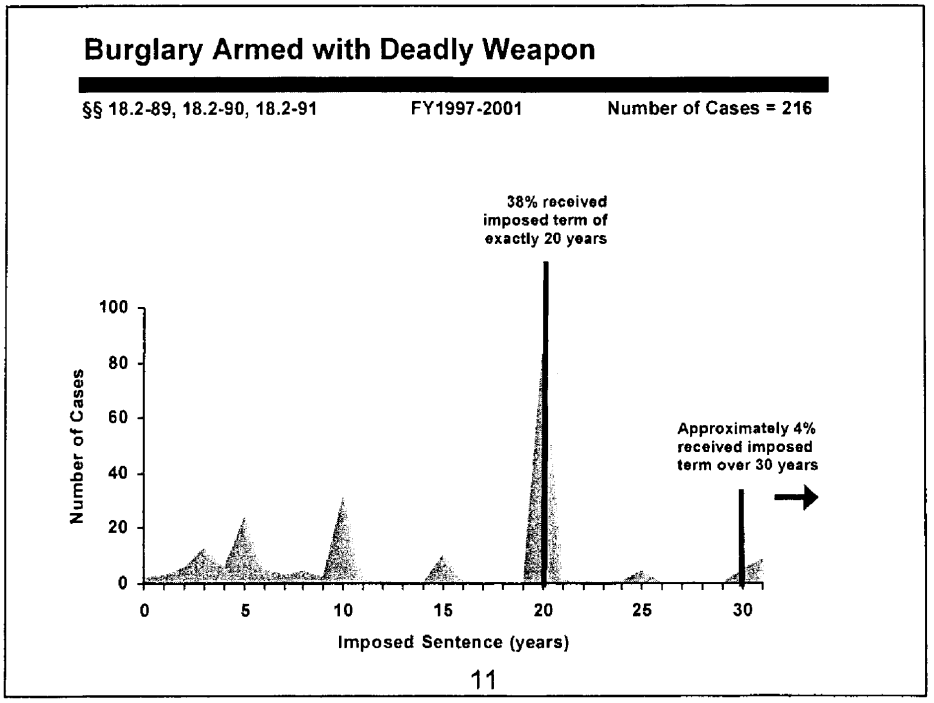
Figure 2



Burglary

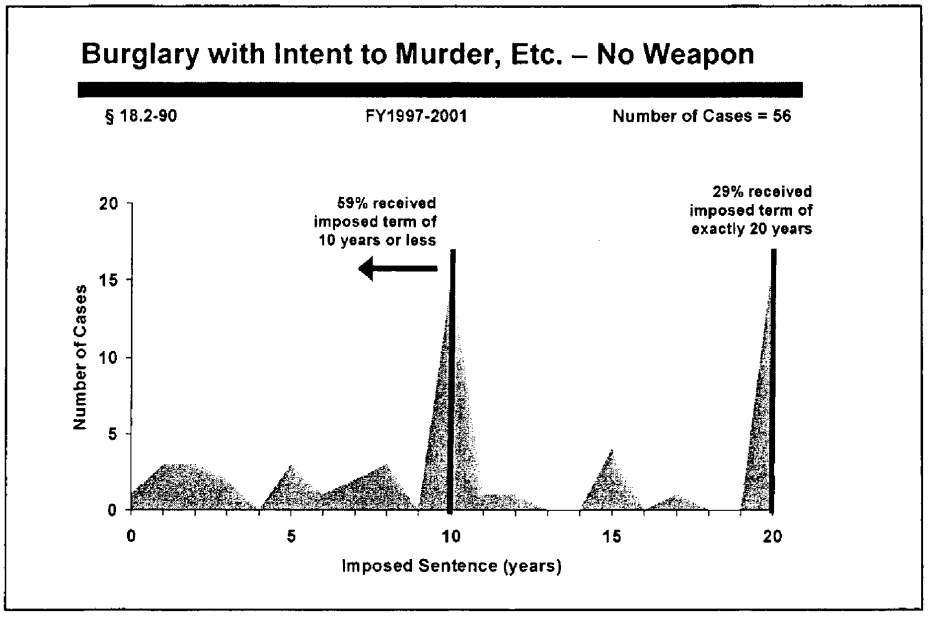
In Virginia, any burglary committed while the offender is armed with a deadly weapon (§§18.2-89, 18.2-90, 18.2-91) is punishable as a Class 2 felony, which carries a range of imprisonment of 20 years to life. Data for armed burglary reveals that an imposed sentence of 20 years is the most common sentence, received by 38% of the offenders convicted of this crime. Although these data include attempted and conspired crimes, which carry a lower statutory penalty, few of these cases are reported as attempted or conspired acts. The data for this crime may not adequately account for those cases which result in conviction for a lesser offense, such as statutory burglary.

Figure 3



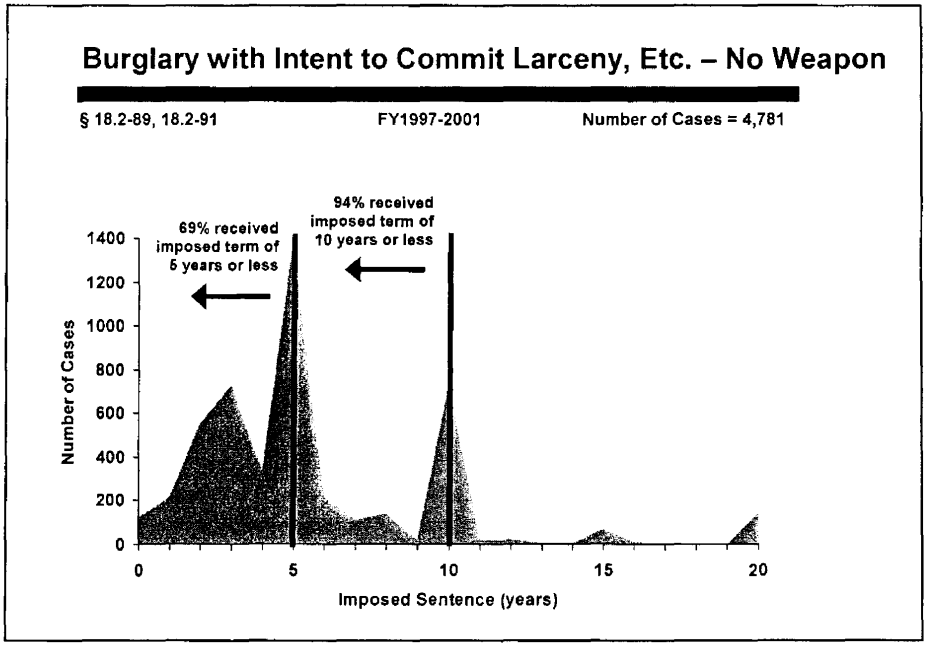
The vast majority of convictions for burglary do not involve a deadly weapon. Burglary committed without a deadly weapon but with intent to commit murder, rape, robbery or arson (§ 18.2-90) is a Class 3 felony, carrying a penalty of 5 to 20 years in prison. While a large share of cases (59%) result in an imposed sentence of ten years or less, nearly one-third (29%) of offenders receive the statutory maximum penalty of 20 years (Figure 4). The number of offenders convicted of this offense (56 over a five-year period) is relatively small compared to the number of convictions for burglary with intent to commit larceny, assault and battery or other felony under § 18.2-89 and § 18.2-91.

Figure 4



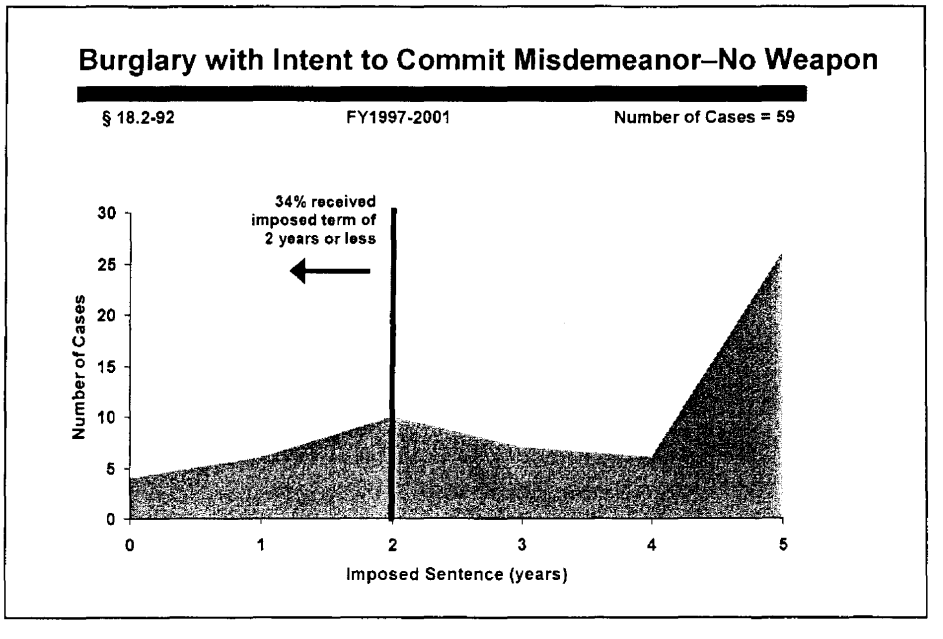
If no deadly weapon is used, burglary with intent to commit larceny, assault and battery, or a felony other than murder, rape, robbery or arson has two distinct penalty ranges specified in current *Code*. If a person commits this type of burglary within a dwelling at night with intent to commit a felony or larceny (§18.2-89), it is a Class 3 felony (5 to 20 years); otherwise, it is a felony punishable by 1 to 20 years imprisonment (§18.2-91). Together, more than two-thirds (69%) of these burglary offenders are given an imposed sentence of five years or less (Figure 5). Moreover, nearly all offenders convicted of this type of burglary (94%) receive an imposed term of ten years or less.

Figure 5



A lesser burglary offense is defined in Virginia's criminal *Code* as well. Burglary committed with intent to commit a misdemeanor other than assault and battery or trespass (§18.2-92) is a Class 6 felony (1 to 5 years) if the offender did not possess a deadly weapon. While one-third (34%) of burglars convicted of this lesser burglary receive an imposed sentence of two years or less, the maximum statutory penalty of five years is imposed in nearly half the cases (Figure 6).

Figure 6

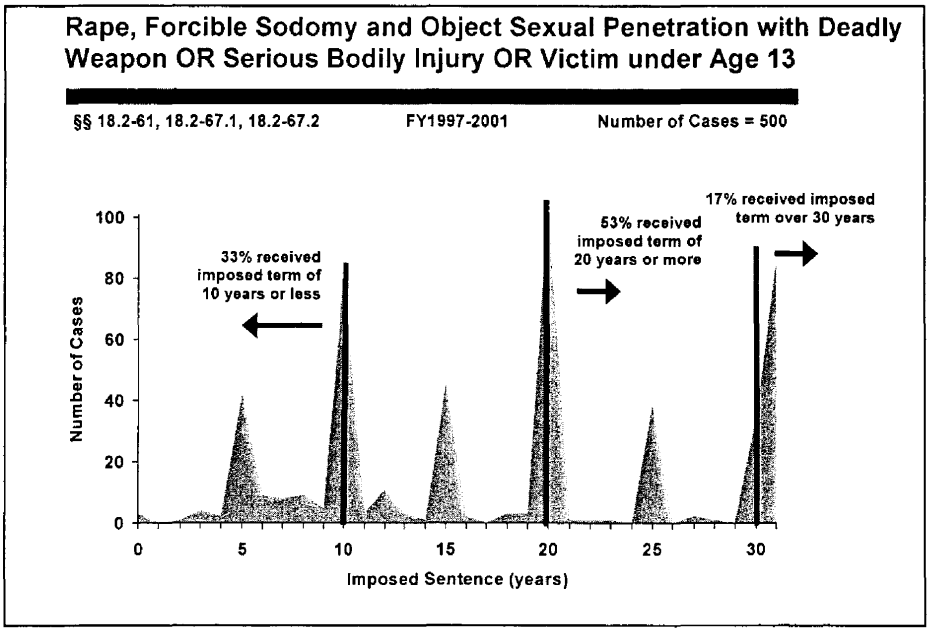


Sex Offenses

The Crime Commission's Sub-committee reviewed conviction and sentencing data for rape and other sexual assault offenses from a variety of aspects. Rape, forcible sodomy, and object sexual penetration (§§18.2-61, 18.2-67.1, 18.2-67.2) are unclassed felony crimes for which the offender can receive a sentence of five years up to life imprisonment. When these crimes involve a deadly weapon, serious bodily injury to the victim, or a victim under the age of 13, only one in three offenders (33%) is given an imposed term of ten years or less (Figure 7). Over half (53%) of these cases result in an imposed sentence of 20 years or more. However, many of these offenders receive a substantially longer sanction. In over 17% of these cases, the offender will serve a term of over 30 years in prison, including some that will serve a life sentence.

The variability in sentencing data for rape, forcible sodomy, and object sexual penetration reflect the considerable variation in offense and case circumstances surrounding these cases. Sexual assault crimes, particularly those involving young victims, can be difficult to prosecute. The family of a young victim may not wish the child to undergo the trauma of testifying in court. It may be difficult for a young victim to accurately describe the nature of the acts committed by the defendant. Often, these cases are resolved through a plea agreement between the defendant and the Commonwealth. Prosecutors may offer a plea agreement to protect the victim from the rigors of a trial or to ensure that a rapist will be convicted and serve a term of incarceration for his crime. In fact, in FY2000, nearly two-thirds (63%) of the rape cases with a victim under age 13 were resolved by a guilty plea from the defendant, compared to approximately one-third (35%) of rape cases with older victims.

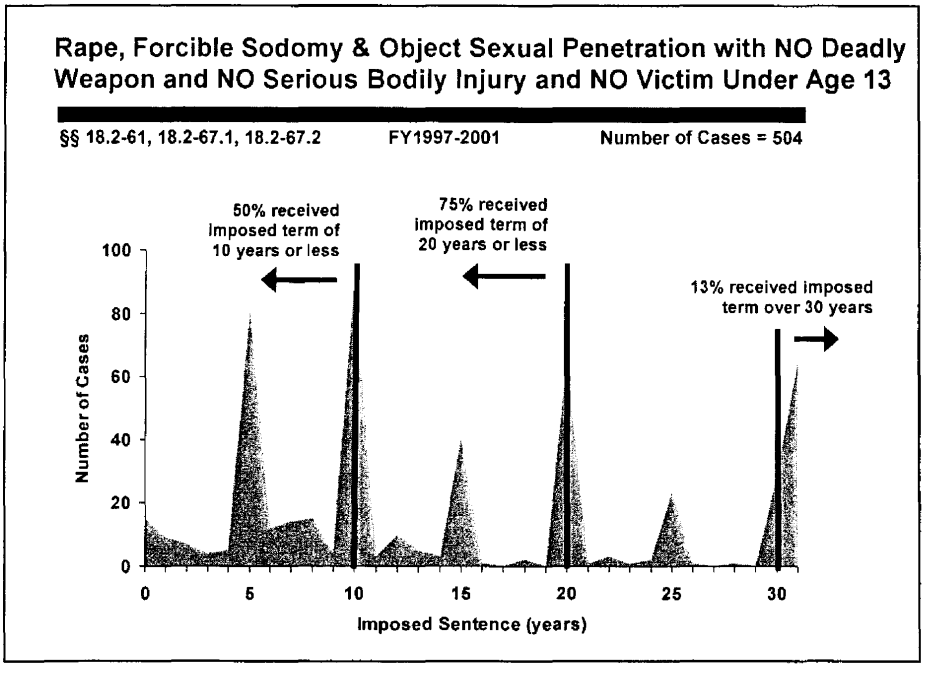
Figure 7



Approximately half of the rape, forcible sodomy and object sexual penetration

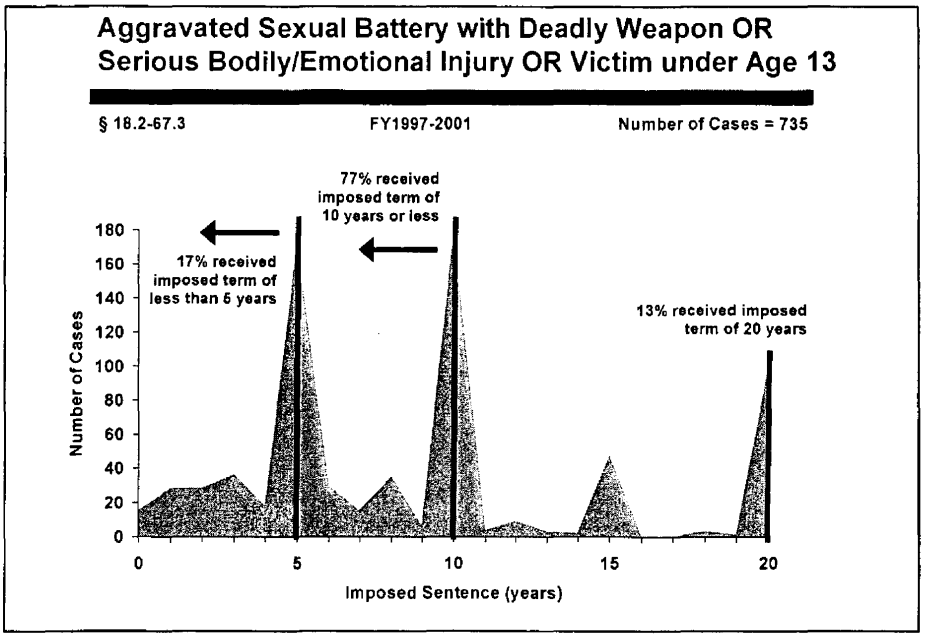
cases convicted under §§18.2-61, 18.2-67.1 or §18.2-67.2 do not involve a weapon, do not result in serious bodily injury and do not involve a victim under the age of 13. Although the statutory penalty range specified in *Code* is five years up to life in prison, nearly half of these cases resulted in an imposed term of ten years or less (Figure 8). Three-fourths of the offenders were given a term of 20 years or less. Like the violent sexual assault offenses with a weapon, serious injury or a very young victim, a large share of other rape, forcible sodomy and object sexual penetration cases result in a term of confinement that will exceed 30 years. Here, 13% of offenders will serve such a term. The variability of sentencing patterns again reflects the considerable difficulties in the investigation and prosecution of sexual assault crimes.

Figure 8



The *Code* defines the crime of aggravated sexual battery as 1) sexual abuse of a victim who is under the age of 13 or 2) sexual abuse committed against the will of the victim by force, threat, intimidation, or the mental incapacity or physical helplessness of the victim, if the victim is 13 to 14 years of age, the act causes serious bodily or mental injury or the offender uses or threatens to use a deadly weapon (§18.2-67.3). Aggravated sexual battery is punishable by 1 to 20 years in prison. The Sub-committee examined those cases of aggravated sexual battery that involve a deadly weapon, result in serious bodily or mental injury, or victimize a child under the age of 13 (Figure 9).

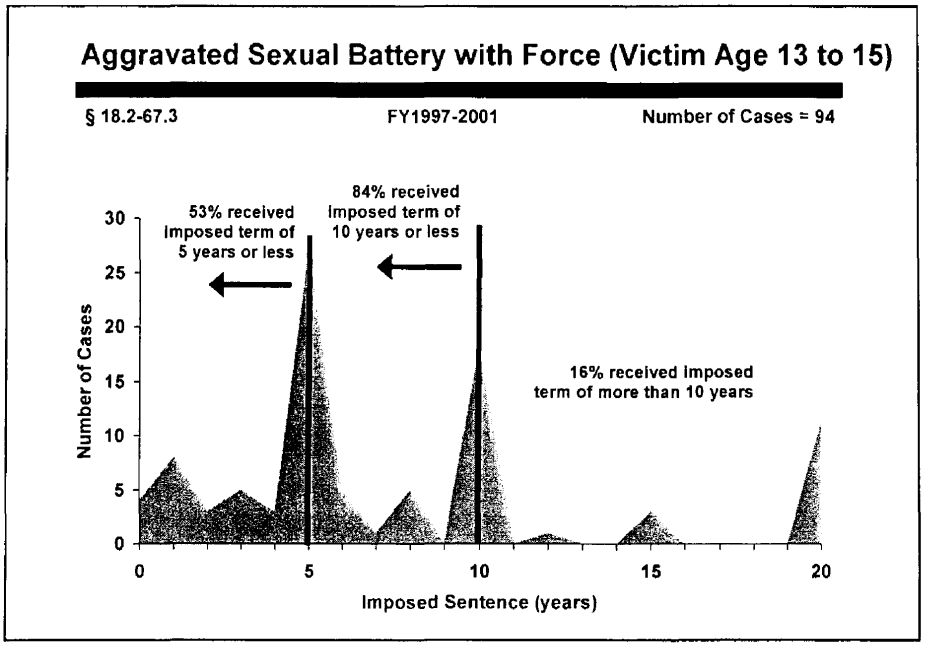
Figure 9



For cases involving one of these elements, judges and juries impose a term of five years or less in fewer than 17% of the cases, even though the *Code* permits an imposed sentence as low as one year (Figure 9). For over half the offenders (60%) who commit this type of crime, a term over five years up to ten years is imposed. Like the rape, forcible sodomy and object sexual penetration offenses, a sizable share of offenders receive a longer term; here, 13% were sentenced to the maximum statutory penalty allowed by law (20 years).

While the vast majority of aggravated sexual battery cases involve a deadly weapon, serious bodily or mental injury, or a victim under age 13, one in ten cases of aggravated sexual battery do not involve any of those elements. These remaining aggravated sexual battery offenses involve 13 and 14 year old victims. Sentencing patterns are strikingly different for this type of aggravated sexual battery offense. Here, over half (53%) receive a term of five years or less (Figure 10). For more than 84% of batterers who victimize a 13 or 14 year old, the imposed sentence is ten years or less.

Figure 10

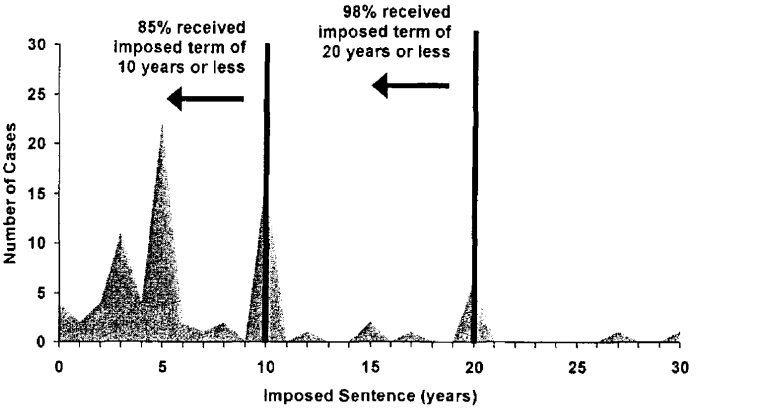


Assault

The vast majority of assault crimes defined in the *Code of Virginia* fall into one of the established six felony classes. As one of the objectives of the study was to establish degrees, or seriousness, within broad categories of offenses, the Crime Commission's Sub-committee reviewed the penalty structures for the various assault crimes and placed each into a structure that categorized the crimes by degree. For example, aggravated malicious wounding (§18.2-51.2), which carries a penalty range of 20 years to life, was categorized as first-degree assault. With the exception of two offenses currently defined in the *Code*, this categorization process for assault crimes did not alter the existing statutory punishment range. For two offenses, malicious wounding of a police officer (§18.2-51.1) and malicious wounding by caustic substance (§18.2-52), the maximum statutory penalty was increased from 30 to 40 years under the proposal (the statutory minimum remains at 5 years). Because these two crimes are currently the only unclassed felony assaults in the *Code*, the Sub-committee focused its attention here when examining sentencing data.

Compared with other assaults, like unlawful wounding, convictions for malicious wounding of a police officer or by a caustic substance are relatively rare (a total of 80 over 5 years). The vast majority (85%) have a term of ten years or less imposed by the judge or jury trying the case (Figure 11). The most serious cases (2%) receive an imposed term in excess of 20 years. These data include attempted and conspired acts, for which the five year statutory minimum is not applicable.

Figure 11



Note: Data includes 71 cases of malicious wounding of a law enforcement officer (§ 18.2-51.1) and 9 cases of malicious wounding with caustic substance or fire (§ 18.2-52).

Arson

As with assault crimes, the Sub-committee found that most arson offenses fall into one of the established six felony classes. The Sub-committee categorized arson crimes into degrees, examining the unclassed felonies in greater detail. Arson of an occupied dwelling or occupied church (§18.2-77(A,ii)) is currently unclassed and carries a penalty of five years to life in prison. The Sub-committee was also interested in examinining any arson crimes that resulted in serious bodily injury to another person. Examining conviction data reveals that only a small portion of arson cases (less than 6%) cause serious bodily injury (a total of seven cases over five years). Sentences imposed for these offenders ranged from 5 to 30 years, although more than half received a term of at least 20 years (Figure 12).

Figure 12

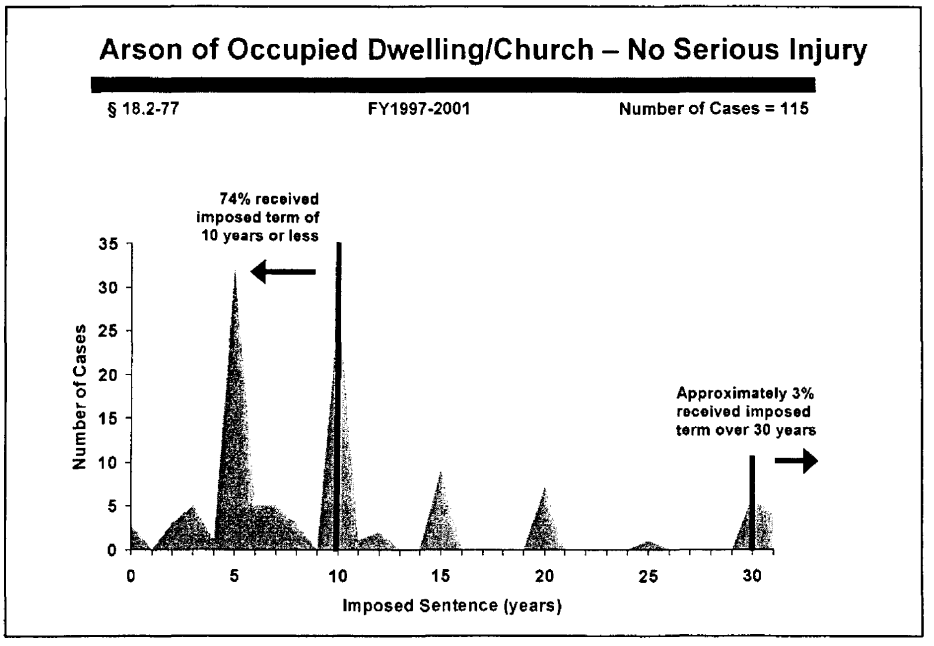
Arson of Occupied Dwelling or Other Structure–Serious Injury

§§ 18.2-77, 18.2-79, 18.2-80 FY1997-2001 Number of Cases = 7

Imposed Sentence (years)	Number of Cases
5.0	1
8.0	1
14.0	1
20.0	2
25.0	1
30.0	1
TOTAL	7

For arson of an occupied dwelling or church that does not result in serious bodily injury to another, sentencing data reveal that judges and juries impose a term of ten years or less in the majority (74%) of cases (Figure 13). In less than 5% of cases without serious injury is a term over 20 years imposed.

Figure 13



Drugs

Because of the many drug crimes defined in the *Code of Virginia*, the Sub-committee reviewed a considerable amount of conviction and sentencing data for offenses involving controlled substances. The Sub-committee first assessed data for manufacturing a Schedule I or II drug, such as cocaine or heroin. This offense is an unclassed felony carrying a penalty of 5 to 40 years in prison. According to available data, there have been 27 convictions for this crime during FY1997 through FY2001 (Figure 14). Sentencing data indicate that none of these offenders has received an imposed sentence of more than ten years. The most common term imposed for a conviction for manufacturing a Schedule I or II drug is five years, given in 45% of the cases.

Figure 14

Manufacture Schedule I/II Drug

§ 18.2-248 (C) FY1997-2001 Number of Cases = 27

Imposed Sentence (Years)	Cases	Percent
0	1	3.7
3	1	3.7
4	1	3.7
5	12	44.5
6	4	14.8
8	2	7.4
10	6	22.2
Total	27	100.0

The Sub-committee was also interested in offenders who are repeat drug sellers. Under current *Code*, a third or subsequent sale of a Schedule I or II drug is an unclassed felony punishable by a term of five years to life in prison. The 2000 General Assembly adopted legislation that added a mandatory minimum penalty for this crime. Offenders with a third or subsequent conviction for selling, distributing, or possessing with intent to distribute such a drug now are subject to a three-year mandatory minimum term. During FY2001, eight offenders were convicted for a third or subsequent sale of a Schedule I or II drug. One-third of these repeat drug sellers receive an imposed sentence of 20 years or more; in the majority of these cases, a term of at least ten years is imposed (Figure 15). A third or subsequent conviction for selling .5 ounce or more of marijuana carries the same penalties and mandatory minimum sentence described above. For the period studied, there have been no known convictions for third or subsequent sale of marijuana for which the mandatory minimum would apply.

Figure 15

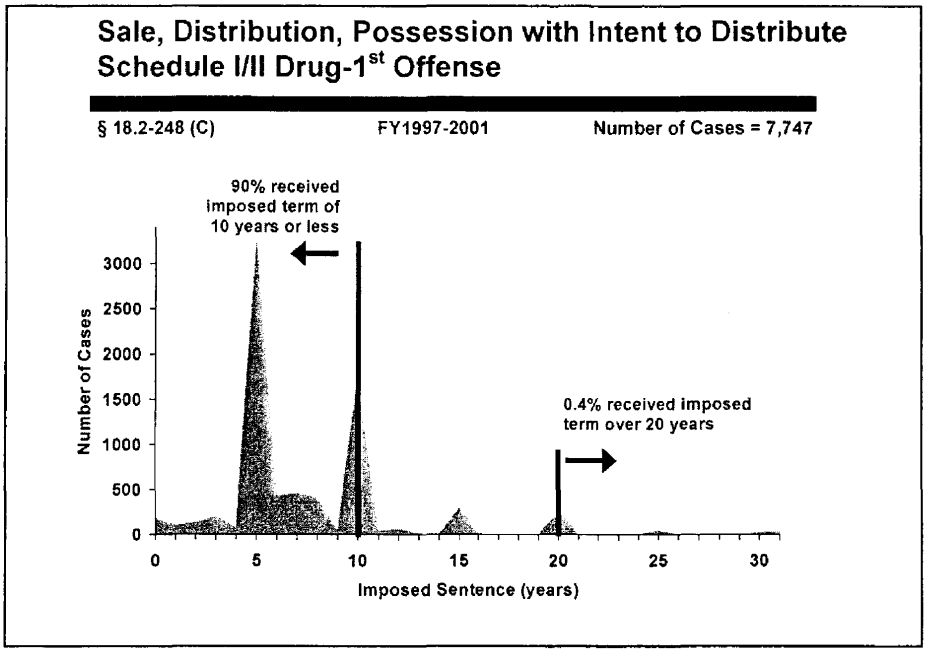
Sale, Distribution, Possession with Intent to Distribute Schedule I/II Drug – 3rd of Subsequent Offense

§ 18.2-248 (C) FY1997-2001 Number of Cases = 8

Imposed Sentence (Years)	Cases	Percent
5	1	12.5
8	1	12.5
10	2	25.0
15	1	12.5
20	2	25.0
40	1	12.5
Total	8	100.0

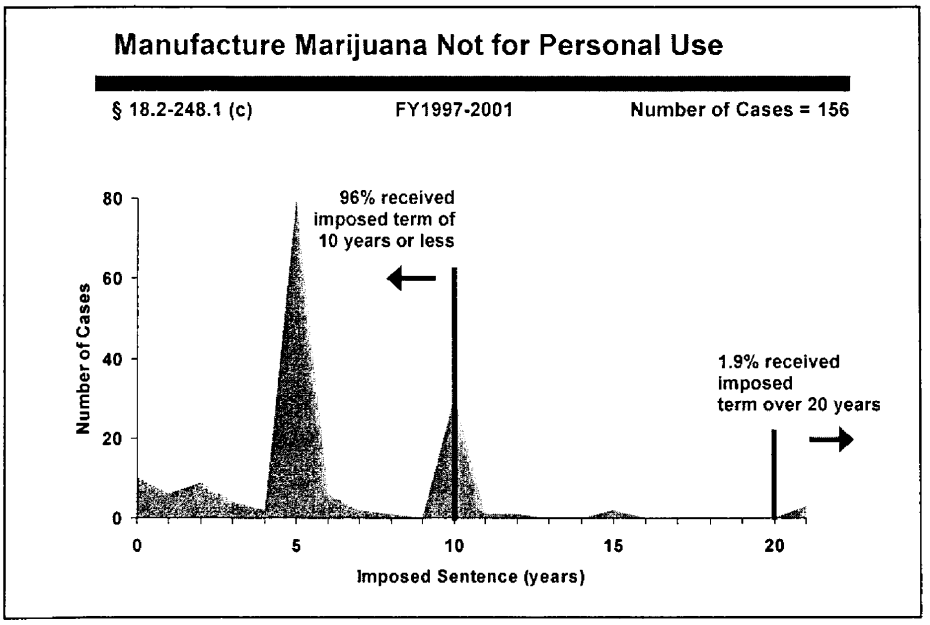
Sanctioning practices in cases of third or subsequent Schedule I or II drug sales reflect a starkly different pattern than sentencing in first-time sale cases. A first conviction for selling, distributing, or possessing with intent to distribute a Schedule I or II drug is punishable by imprisonment of 5 to 40 years. In first-time sales cases, 41% of the offenders are given an imposed sentence of exactly 5 years (Figure 16). Fully 90% of the imposed sentences fall at or below 10 years. Less than 0.4% of these cases result in an imposed term of more than 20 years.

Figure 16



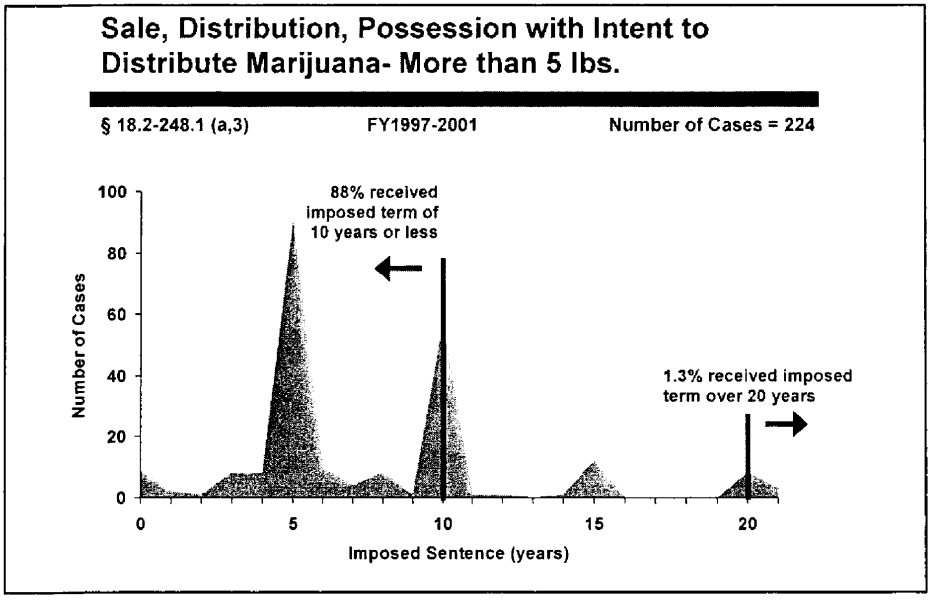
The Sub-committee assessed crimes involving marijuana separately from crimes associated with a Schedule I or II drug. Currently, the crime of manufacturing marijuana (§18.2-248.1(c)), an unclassed felony, is punishable by a term of confinement of 5 to 30 years. Examining the sentencing data revealed that few of these cases (less than 2%) result in a term over 20 years (Figure 17). A term of ten years or less is imposed in nearly all (96%) of the cases for this offense.

Figure 17



The pattern for selling, distributing, or possessing with intent to distribute more than five pounds of marijuana (§18.2-248.1(a,3)) is fairly similar to that for manufacturing this drug. This crime is also punishable by a term of 5 to 30 years. For more than 88% of offenders convicted for selling over five pounds of marijuana, a term of ten years or less is imposed (Figure 18). Only 1% receives a term over 20 years.

Figure 18



Larceny

In its review of larceny offenses, the Sub-committee examined data on larceny crimes in Virginia and information on larceny sentencing policy throughout the United States. In 2000, the Sentencing Commission conducted an extensive study of larceny and

fraud crimes in the Commonwealth and surveyed other states regarding sentencing laws for these crimes. The Sentencing Commission provided the information to the Crime Commission's Sub-committee. The state summary includes discussion of felony larceny thresholds, the impact of inflation on thresholds and the different structures used to address larceny throughout the states.

Felony thresholds are the minimum dollar value of a stolen good or service that will result in an offender being charged with a felony. Virginia's larceny threshold was last adjusted in 1980, when it was raised from $100 to $200. Virginia is one of only two states with a felony threshold for larceny as low as $200 (Figure 19). Only Indiana, where the threshold is defined by the intent to deprive another person of the property's value rather than a dollar value, has a lower threshold than Virginia. Six states and Washington, DC apply a threshold of $250 to define felony theft. Twenty states have established a threshold of $500 to delineate felony theft. Another 11 states utilize $1,000 as the felony threshold. Wisconsin's felony larceny threshold is $2,500, the most of any state. As can be seen in Figure 19, 47 states plus the District of Columbia have a higher felony larceny threshold than Virginia. Virginia is one of only eight states that never adjusted its larceny threshold after 1980.

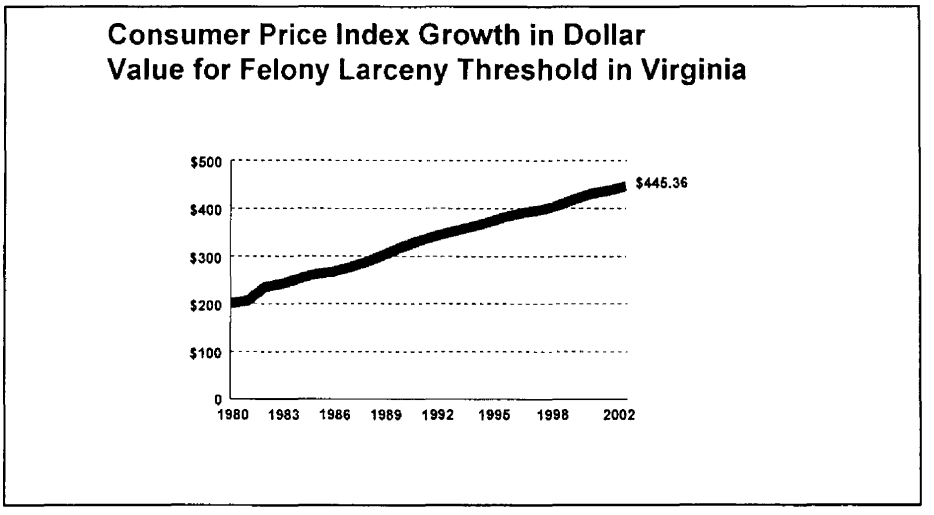
Figure 19

State Felony Larceny Dollar Thresholds

Felony Dollar Threshold	State	Year Adopted
$0	Indiana	1977
$200	Virginia	1980
(2 states)	New Jersey	1984
$250	Washington	1975
(6 states	Alabama	1979
& DC)	Washington, DC	1982
	Massachusetts	1987
	New Mexico	1987
	Arizona	1989
	Nevada	1989
$300	Illinois	1982
(4 states)	Florida	1986
	Hawaii	1986
	Kentucky	1992
$400	California	1982
$500	Rhode Island	1915
(20 states)	Alaska	1977
	New Hampshire	1977
	North Dakota	1981
	Vermont	1981
	Georgia	1982
	Minnesota	1983
	Wyoming	1984
	Kansas	1988
	Tennessee	1989
	South Dakota	1990
	Nebraska	1992
	Arkansas	1995
	Ohio	1996
	Colorado	1998
	Louisiana	1999
	Oklahoma	2001
	Maryland	2002
	Missouri	2002
	Mississippi	2003
$750	Oregon	1993
$1,000	Connecticut	1982
(11 states)	New York	1986
	North Carolina	1991
	Iowa	1992
	South Carolina	1994
	West Virginia	1994
	Utah	1995
	Delaware	1996
	Idaho	1998
	Michigan	1999
	Montana	1999
$1,500	Texas	1993
$2,000	Pennsylvania	1973
(2 states)	Maine	1995
$2,500	Wisconsin	2001

Since 1980, the threshold defining felony larceny (not from a person) in Virginia has been $200. Using the national average Consumer Price Index, the $200 threshold established in 1980 is equivalent to $445.36 today (Figure 20).

Figure 20



Most states have established not a single but multiple dollar thresholds for larceny offenses, with crimes involving higher dollar amounts punished more severely than those with lower dollar amounts. Of the 50 states plus Washington, DC, 16 have a single dollar threshold, meaning that there is a single dollar value that defines the severity level of larceny. Two-thirds of states have multiple larceny thresholds, that is, there is more than one dollar threshold to distinguish between larceny class or penalty range (Figure 21). More than 25% of states have two thresholds, more than 23% of states have three thresholds, and nearly 12% of states have four thresholds. Six percent of states have five or more thresholds. The larceny penalty structure for each state plus Washington, DC is shown in Figure 22.

Figure 21

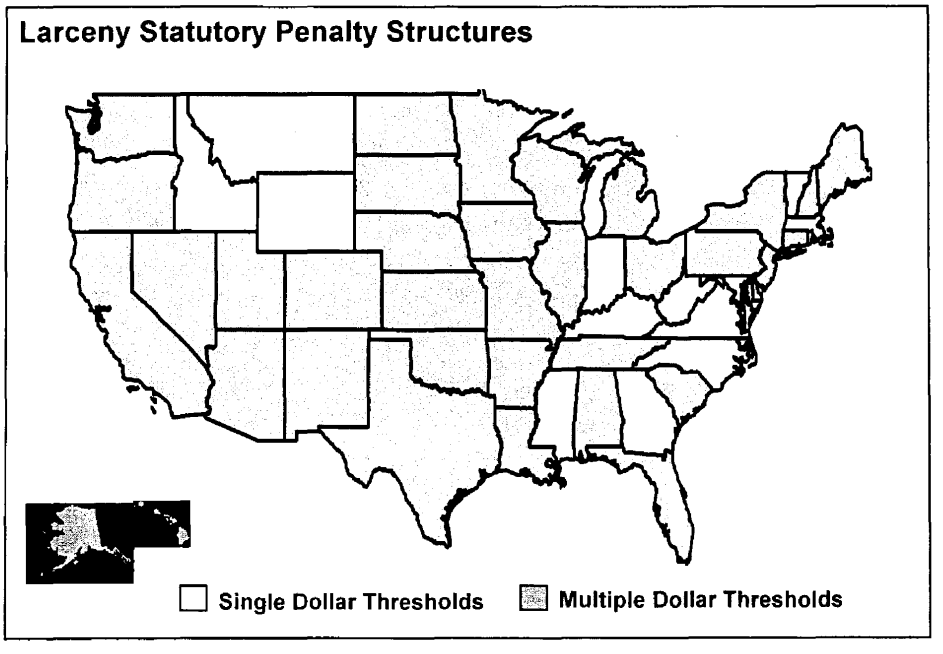


Figure 22

State	Felony Offenses	Felony Dollar Level	Felony Penalty Range	Misdemeanor Offenses	Misdemeanor Dollar Level
Alabama	-1st Degree theft -2nd Degree theft	-more than $1,000 -more than $250 to $1,000	-2 to 20 yrs -1 yr 1 day to 10 yrs	3rd Degree theft	$250 or less
Alaska	-1st Degree theft -2nd Degree theft	-$25,000 or more -$500 but less than $25,000	-up to 10 yrs -up to 5 yrs	-3rd Degree theft -3rd Degree theft	-$50 to less than $500 -less than $50
Arizona	-Class 2 felony -Class 3 felony -Class 4 felony -Class 5 felony -Class 6 felony	-$25,000 or more -$3,000 but less than $25,000 -$2,000 but less than $3,000 -$1,000 but less $2,000 -$250 but less than $1,000	-5 yrs -3.5 yrs -2.5 yrs -1.5 yrs -1 yr	Class 1 misdemeanor	less than $250
Arkansas	-Class B felony -Class C felony	-$2,500 or more -more than $500 but less than $2,500	-5 to 20 yrs -3 to 10 yrs	Class A misd.	$500 or less
California	Grand theft	more than $400	up to 1 yr	Petty theft Misdemeanor	-more than $50 to $400 -$50 or less
Colorado	-Class 3 felony -Class 4 felony	-$15,000 or more -$500 but less than $15,000	-4 to 8 yrs -2 to 4 yrs	-Class 2 misd. -Class 3 misd.	-$100 but less than $500 -less than $100
Connecticut	-1st Degree larc. -2nd Degree larc. -3rd Degree larc.	-more than $10,000 -more than $5,000 to $10,000 -more than $1,000 to $5,000	-1 to 20 yrs -1 to 10 yrs -1 to 5 yrs	-4th Degree larc. -5th Degree larc. -6th Degree larc.	more than $500 to $1,000 -more than $250 to $500 -$250 or less
Delaware	-Class C felony -Class E felony -Class G felony	-more than $100,000 -more than $50,000 but less than 100,000 -$1,000 to $50,000	up to 10 yrs up to 5 yrs up to 2 yrs	Class A misd.	less than $1,000
Florida	-Grand theft-1st -Grand theft-2nd -Grand theft -3rd	-$100,000 or more -$20,000 but less than $100,000 -$300 to $20,000	-up to 30 yrs -up to 15 yrs -up to 5 yrs	-Petit theft-1st -Petit theft-2nd	-$100 but less than -$300 but less than $100
Georgia	Felony	more than $500	1 to 10 years	Misdemeanor	$500 or less
Hawaii	1st Degree theft 2nd Degree theft	more than $20,000 more than $300 to $20,000	up to 10 yrs up to 5 yrs	3rd Degree theft 4th Degree theft	more than $100 to $300 $100 or less
Idaho	Grand theft	more than $1,000	1 to 20 yrs	Petit theft	$1,000 or less
Illinois	Class 1 felony Class 2 felony Class 3 felony	more than $100,000 more than $10,000 but less than $100,000 more than $300 to $10,000	4 to 15 yrs 3 to 7 yrs 2 to 5 years	Class A misd.	$300 or less
Indiana	-Class C felony -Class D felony	-$100,000 or more -less than $100,000	-2 to 8 yrs -6 months to 3 yrs		**all theft with "intent to deprive the other person of its value" is a felony

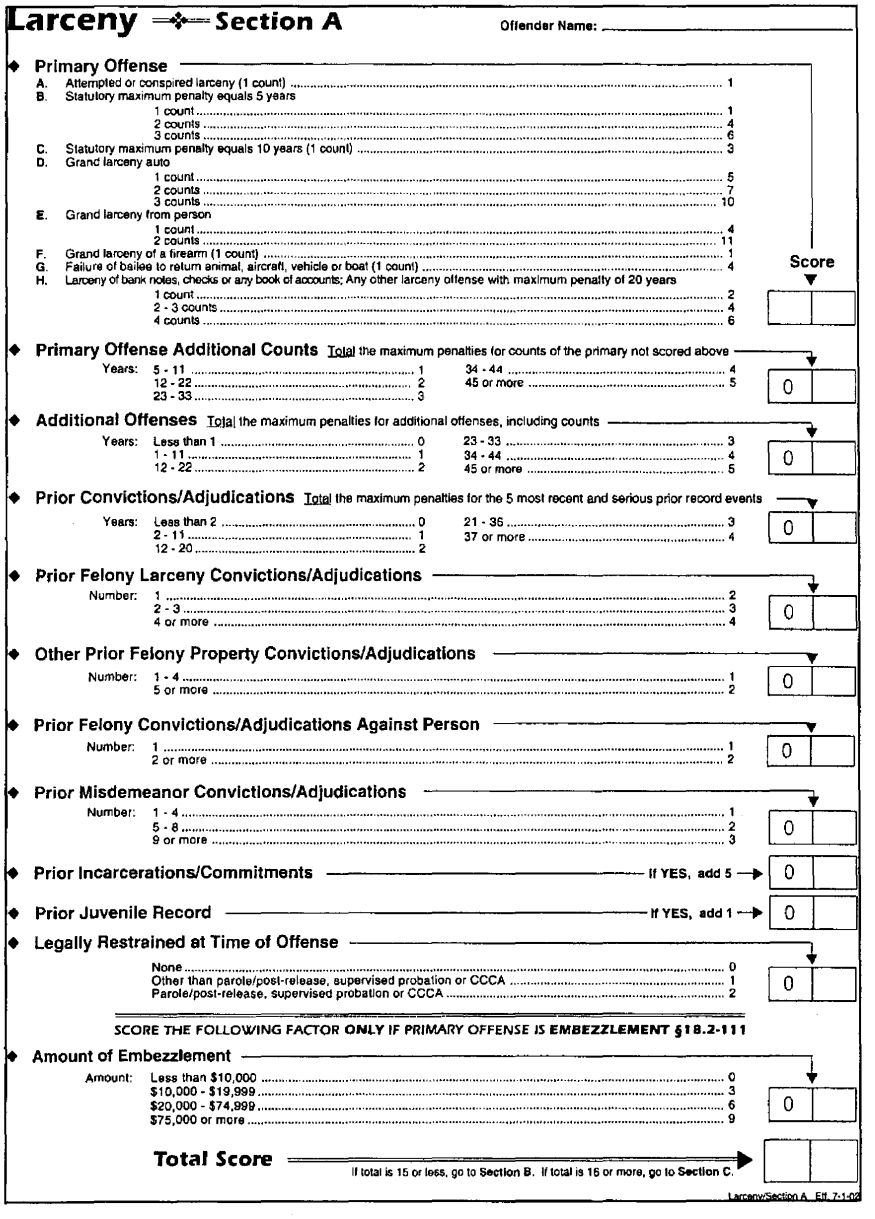
State	Felony Offenses	Felony Dollar Level	Felony Penalty Range	Misdemeanor Offenses	Misdemeanor Dollar Level
Iowa	-Class C felony -Class D felony	-more than $10,000 -more than $1,000 to $10,000	-up to 10 yrs -up to 5 yrs	-Aggravated misd. -Serious misd. Simple misd.	-more than $500 to $1,000 -more than $100 to $500 -$100 or less
Kansas*	-Severity Level 7, nonperson felony -Severity Level 9, nonperson felony	-$25,000 or more -more than $500 to $25,000	-no jail if no other factor -no jail if no other factor	-Class A, nonperson misd.	less than $500
Kentucky	Class D felony	$300 or more	1 to 5 years	Class A misd.	less than $300
Louisiana	-Felony -Felony	-$500 or more -$300 but less than $500	-up to 10 yrs -up to 2 yrs	Misdemeanor	less than $300
Maine	-Class B crime -Class C crime	-more than $10,000 -more than $2,000 to $10,000	-up to 10 yrs -up to 5 yrs	-Class D crime -Class E crime	-more than $1,000 to $2,000 -$1,000 or less
Maryland	Felony	$300 or more	up to 15 yrs	Misdemeanor	less than $300
Massachusetts	Felony	more than $250	up to 5 yrs	Misdemeanor	$250 or less
Michigan	-Felony -Felony	-$20,000 or more -$1,000 but less than $20,000	-up to 10 yrs -up to 5 yrs	-Misdemeanor -Misdemeanor	-$200 but less than $1,000 -less than $200
Minnesota	-Felony -Felony -Felony	-more than $35,000 -more than $2,500 to $35,000 -more than $500 to $2,500	-up to 20 yrs -up to 10 yrs -up to 5 yrs	-Misdemeanor -Misdemeanor	-more than $250 to $500 -$250 or less
Mississippi	Grand larceny	$250 or more	up to 5 yrs	Petit larceny	less than $250
Missouri	Class C felony	$750 or more	up to 7 yrs	Class A misd.	less than $750
Montana	Felony	more than $1,000	up to 10 yrs	Misdemeanor	$1,000 or less
Nebraska	-Class III felony -Class IV felony	-more than $1,500 -$500 to $1,500	-up to 20 yrs -up to 5 yrs	-Class I misd. -Class II	-more than $200 but less than $500 -$200 or less
Nevada	-Category B felony -Category C felony	-$2,500 or more -$250 but less than $2,500	-1 to 10 yrs -1 to 5 yrs	-Misdemeanor -Misdemeanor	-$25 but less than $250 -less than $25
New Hampshire	-Class A felony -Class B felony	-more than $1,000 -more than $500 to $1,000	-up to 7 yrs -1 to 7 yrs	Misdemeanor	$500 or less
New Jersey	-2nd Degree crime -3rd Degree crime -4th Degree crime	-$75,000 or more -$500 but less than $75,000 -more than $200 but less than $500	-5 to 10 yrs -3 to 5 yrs -up to 18 months	Disorderly Person	$200 or less
New Mexico	-2nd Degree felony -3rd Degree felony -4th Degree felony	-more than $20,000 -more than $2,500 to $20,000 -more than $250 to $2,500	-up to 9 yrs -up to 3 yrs -up to 18 months	-Misdemeanor -Petty-misdemeanor	-more than $100 to $250 -$100 or less

State	Felony Offenses	Felony Dollar Level	Felony Penalty Range	Misdemeanor Offenses	Misdemeanor Dollar Level
New York	-Grand larceny-1st -Grand larceny - 2nd Grand larceny -3rd -Grand larceny-4th	-more than $1,000,000 -more than $50,000 to $1,000,000 -more than $3,000 to $5,000 -more than $1,000 to $3,000	-up to 25 yrs -up to 15 yrs -up to 7 yrs -up to 4 yrs	Petit larceny	less than $1,000
North Carolina*	Class H felony	more than $1,000	5 to 6 months with no other factors	Class 1 misd.	$1,000 or less
North Dakota	-Class B felony -Class C felony	-more than $10,000 -more than $500 to $10,000	-up to 10 yrs -up to 5 yrs	Class B misd.	$250 or less
Ohio	-3rd Degree felony -4th Degree felony -5th Degree felony	-$100,000 or greater -$5,000 but less than $100,000 -$500 but less than $5,000	-1 to 5 yrs -6 to 18 months -6 to 12 months	1st Degree misd.	less than $500
Oklahoma	-Grand larceny -Grand larceny	-more than $500 -more than $50 to $500	-up to 5 yrs -up to 1 yr	Petit larceny	$50 or less
Oregon	-Aggravated 1st Degree theft -1st Degree theft	-$10,000 or more -$750 but less than $10,000	-up to 10 yrs -up to 5 yrs	2nd Degree theft	less than $750
Pennsylvania*	-Felony -Felony -Felony -Felony	-more than $100,000 -more than $50,000 to $100,000 -more than $25,000 to $50,000 -more than $2,000 to $25,000	-12 to 18 months -9 to 16 months -6 to 14 months -1 to 12 months	-Misdemeanor -Misdemeanor -Misdemeanor	-$200 to $2,000 -$50 but less than $2,000 -less than $50
Rhode Island	Felony	more than $500	up to 10 yrs	Misdemeanor	$500 or less
South Carolina	-Grand larceny -Grand larceny	-$5,000 or more -more than $1,000 but less than $5,000	-up to 10 yrs -up to 5 yrs	Petit larceny	$1,000 or less
South Dakota	Grand theft	more than $500	up to 10 yrs	-Petty theft -Petty theft	-$100 to $500 -less than $100
Tennessee	-Class B felony -Class C felony -Class D felony -Class E felony	-$60,000 or more -$10,000 but less than $60,000 -$1,000 but less than $10,000 -more than $500 but less than $1,000	-8 to 30 yrs -3 to 15 yrs -2 to 12 yrs -1 to 6 yrs	Class A misd.	$500 or less
Texas	-1st Degree felony -2nd Degree felony -3rd Degree felony -state jail felony	-$200,000 or more -$100,000 but less than $200,000 -$20,000 but less than $100,000 -$1,500 but less than $20,000	-5 to 99 yrs -2 to 20 yrs -2 to 10 yrs -180 days to 2 yrs	-Class A misd. -Class B misd. -Class C misd.	-$500 but less than $1,500 -$50 but less than $500 -less than $50

State	Felony Offenses	Felony Dollar Level	Felony Penalty Range	Misdemeanor Offenses	Misdemeanor Dollar Level
Utah*	-2nd Degree felony -3rd Degree felony	-$5,000 of more -$1,000 but less than $5,000	-no jail if no other factor -no jail if no other factor	-Class A misd. -Class B misd.	$300 but less than $1,000 -less than $300
Vermont	Grand larceny	more than $500	up to 10 yrs	Petit larceny	$500 or less
Virginia	Grand larceny		1 to 20 yrs	Simple larceny	less than $200
Washington*	-1st Degree theft -2nd Degree theft	-more than $1,500 -more than $250 to $1,500	-up to 90 days -up to 60 days	3rd Degree theft	$250 or less
Washington, DC	1st Degree theft	$250 or more	up to 10 yrs	2nd Degree theft	less than $250
West Virginia	Grand larceny	$1,000 or more	1 to 10 years	Petit larceny	less than $1,000
Wisconsin	-Class C felony -Class E felony	-more than $2,500 -more than $1,000 to $2,500	-up to 15 yrs -up to 5 yrs	Class A	$1,000 or less
Wyoming	Felony	$500 or more	up to 10 yrs	Misdemeanor	less than $500

The Crime Commission's Sub-committee discussed whether or not the crime of larceny should be broken down into degrees of severity in Virginia's *Code*. The Sentencing Commission provided the Sub-committee with information from a 1998 study it conducted for a specific type of larceny: embezzlement. The Sentencing Commission studied embezzlement cases sentenced under truth-in-sentencing/no-parole provisions between January 1, 1995 and June 30, 1997. Detailed offense information regarding the dollar value of the embezzlement was extracted from Pre/Post-Sentence Investigation (PSI) reports. Based on the study cases, the Sentencing Commission found a relationship between dollar amount embezzled and the type of disposition as well as the length of the sentence the offender receives. As a result of its 1998 study, the Sentencing Commission added a factor to the larceny guidelines to account for dollar value in embezzlement cases (Figure 23). The Sentencing Commission found that offenders who embezzled $10,000 or more were more likely to receive a term of incarceration in prison than offenders who embezzled lesser amounts (Section A of the larceny sentencing guidelines). The Sentencing Commission also found that embezzlers whose crimes involved $28,000 or more typically received longer prison terms than those who embezzled less (Section C of the larceny sentencing guidelines). The Sub-committee considered this information as it deliberated upon the delineation of all larceny crimes into degrees for the purposes of punishment.

Figure 23



Larceny — Section A

Offender Name: _____

Primary Offense

A.	Attempted or conspired larceny (1 count)	1
B.	Statutory maximum penalty equals 5 years	
	1 count	1
	2 counts	4
	3 counts	6
C.	Statutory maximum penalty equals 10 years (1 count)	3
D.	Grand larceny auto	
	1 count	5
	2 counts	7
	3 counts	10
E.	Grand larceny from person	
	1 count	4
	2 counts	11
F.	Grand larceny of a firearm (1 count)	1
G.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	4
H.	Larceny of bank notes, checks or any book of accounts; Any other larceny offense with maximum penalty of 20 years	
	1 count	2
	2 - 3 counts	4
	4 counts	6

Score: ____

Primary Offense Additional Counts Total the maximum penalties for counts of the primary not scored above

Years:				
	5 - 11	1	34 - 44	4
	12 - 22	2	45 or more	5
	23 - 33	3		

0 ____

Additional Offenses Total the maximum penalties for additional offenses, including counts

Years:				
	Less than 1	0	23 - 33	3
	1 - 11	1	34 - 44	4
	12 - 22	2	45 or more	5

0 ____

Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

Years:				
	Less than 2	0	21 - 36	3
	2 - 11	1	37 or more	4
	12 - 20	2		

0 ____

Prior Felony Larceny Convictions/Adjudications

Number:		
	1	2
	2 - 3	3
	4 or more	4

0 ____

Other Prior Felony Property Convictions/Adjudications

Number:		
	1 - 4	1
	5 or more	2

0 ____

Prior Felony Convictions/Adjudications Against Person

Number:		
	1	1
	2 or more	2

0 ____

Prior Misdemeanor Convictions/Adjudications

Number:		
	1 - 4	1
	5 - 8	2
	9 or more	3

0 ____

Prior Incarcerations/Commitments — If YES, add 5 → 0 ____

Prior Juvenile Record — If YES, add 1 → 0 ____

Legally Restrained at Time of Offense

None	0
Other than parole/post-release, supervised probation or CCCA	1
Parole/post-release, supervised probation or CCCA	2

0 ____

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **EMBEZZLEMENT §18.2-111**

Amount of Embezzlement

Amount:	
Less than $10,000	0
$10,000 - $19,999	3
$20,000 - $74,999	6
$75,000 or more	9

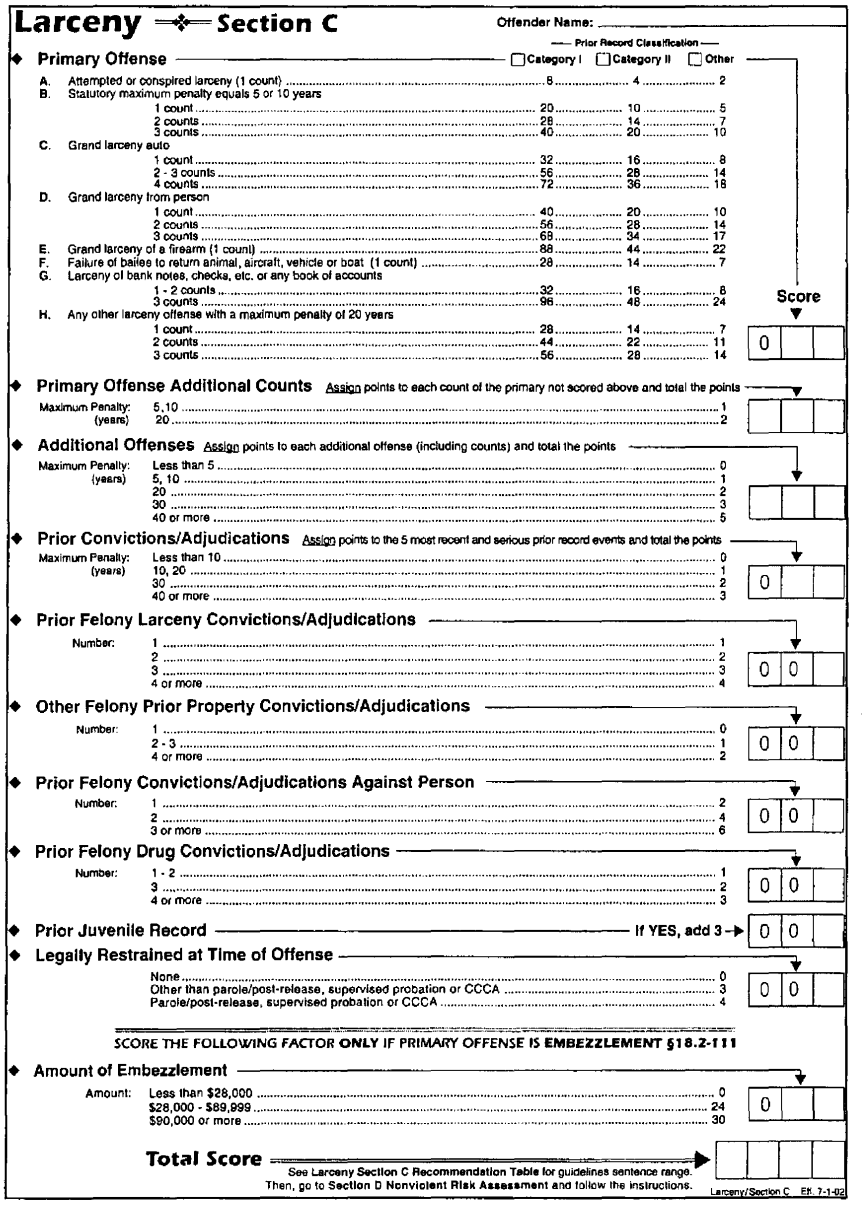
0 ____

Total Score ____

If total is 15 or less, go to **Section B.** If total is 16 or more, go to **Section C.**

Larceny/Section A Eff. 7-1-02

Figure 23 (continued)



Larceny — Section C

Offender Name: _____

— Prior Record Classification —

◆ **Primary Offense** — ☐ Category I ☐ Category II ☐ Other

A.	Attempted or conspired larceny (1 count)	8	4	2
B.	Statutory maximum penalty equals 5 or 10 years			
	1 count	20	10	5
	2 counts	28	14	7
	3 counts	40	20	10
C.	Grand larceny auto			
	1 count	32	16	8
	2 - 3 counts	56	28	14
	4 counts	72	36	18
D.	Grand larceny from person			
	1 count	40	20	10
	2 counts	56	28	14
	3 counts	68	34	17
E.	Grand larceny of a firearm (1 count)	88	44	22
F.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	28	14	7
G.	Larceny of bank notes, checks, etc. or any book of accounts			
	1 - 2 counts	32	16	8
	3 counts	96	48	24
H.	Any other larceny offense with a maximum penalty of 20 years			
	1 count	28	14	7
	2 counts	44	22	11
	3 counts	56	28	14

Score: 0

◆ **Primary Offense Additional Counts** Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years)		
5,10		1
20		2

◆ **Additional Offenses** Assign points to each additional offense (including counts) and total the points

Maximum Penalty (years)	
Less than 5	0
5, 10	1
20	2
30	3
40 or more	5

◆ **Prior Convictions/Adjudications** Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty (years)	
Less than 10	0
10, 20	1
30	2
40 or more	3

Score: 0

◆ **Prior Felony Larceny Convictions/Adjudications**

Number:	
1	1
2	2
3	3
4 or more	4

Score: 0 0

◆ **Other Felony Prior Property Convictions/Adjudications**

Number:	
1	0
2 - 3	1
4 or more	2

Score: 0 0

◆ **Prior Felony Convictions/Adjudications Against Person**

Number:	
1	2
2	4
3 or more	6

Score: 0 0

◆ **Prior Felony Drug Convictions/Adjudications**

Number:	
1 - 2	1
3	2
4 or more	3

Score: 0 0

◆ **Prior Juvenile Record** — If YES, add 3 → Score: 0 0

◆ **Legally Restrained at Time of Offense**

None	0
Other than parole/post-release, supervised probation or CCCA	3
Parole/post-release, supervised probation or CCCA	4

Score: 0 0

SCORE THE FOLLOWING FACTOR **ONLY** IF PRIMARY OFFENSE IS **EMBEZZLEMENT §18.2-111**

◆ **Amount of Embezzlement**

Amount:	
Less than $28,000	0
$28,000 - $89,999	24
$90,000 or more	30

Score: 0

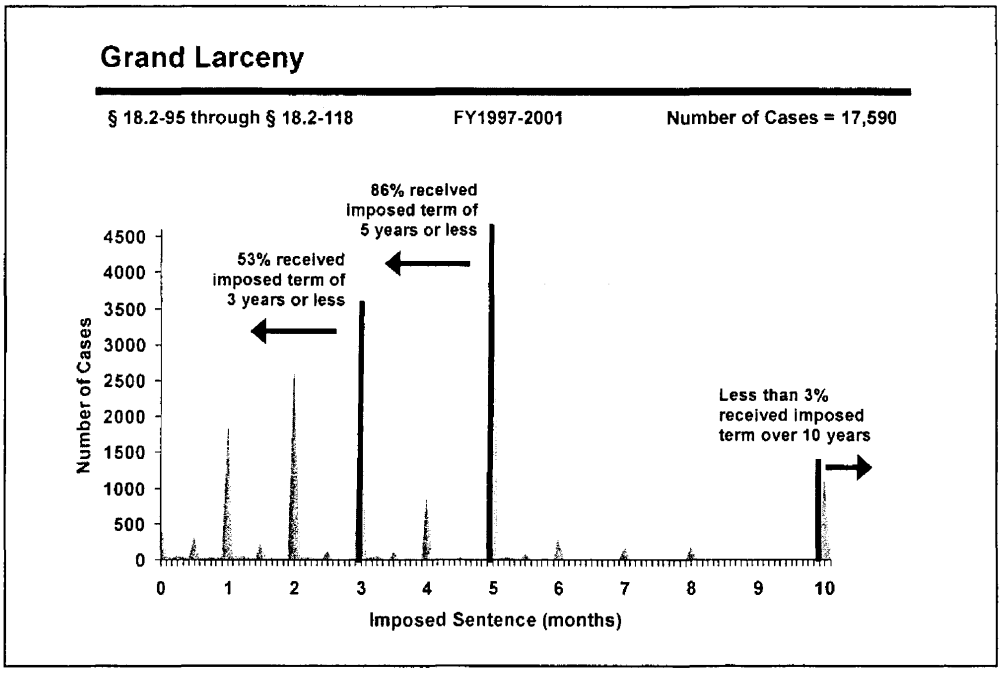
Total Score → _____

See **Larceny Section C Recommendation Table** for guidelines sentence range.
Then, go to **Section D Nonviolent Risk Assessment** and follow the instructions.

Larceny/Section C Eff. 7-1-02

In Virginia, grand larceny (§§18.2-95 through 18.2-118) is an unclassed felony punishable by a term between 1 and 20 years in prison. For the crime of grand larceny, overall, more than half (53%) of the offenders are given an imposed term of three years or less, and 86% receive an imposed term of five years or less (Figure 24). In less than 3% of felony larceny cases is a term over 10 years imposed.

Figure 24



V. Study Recommendations

The Virginia State Crime Commission will be sponsoring six bills and two resolutions which were recommended by the Title 18.2 Sub-Committee. Each of these will be briefly discussed below. Copies of the introduced legislation can be found in Attachment 2.

BILL #1: Statutory Restructuring of Felony Offenses

The Virginia State Crime Commission recommends the following proposal for a new penalty structure in Title 18.2 which will encompass seven classes of felony offenses:

Offense Classification	Penalty Range
Capital Murder	Life – Death
Class I Felony	20 years – Life
Class II Felony	5 years – 40 years
Class III Felony	5 years – 20 years
Class IV Felony	2 years – 10 years

Class V Felony	1 year – 10 years
Class VI Felony	1 year – 5 years

The Virginia State Crime Commission recommends the following amendments to define terms in Title 18.2 of the *Code of Virginia:*

> *"Armed with a deadly weapon" means the possession of any weapon described in subsection A of 18.2-308 or any other instrumentality whatsoever that under the circumstances in which it is used, attempted to be used or threatened to be used, would likely cause death or serious bodily injury to a human being.*
>
> *"Serious bodily injury" shall means bodily injury that involves (i) a substantial risk of death, (ii) physical pain that is chronic or experienced over a protracted period of time, (iii) protracted disfigurement, or (iv) protracted loss or impairment of the function of a bodily member, organ or mental faculty.*

Weapons under 18.2-308 include: (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; or (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart.

The Virginia State Crime Commission recommends the following amendments in Title 18.2 of the *Code of Virginia*:

Robbery

- First Degree – Class 1 Felony
  Involves being armed with a deadly weapon, AND serious bodily injury
- Second Degree – Class 2 Felony
  All other robberies

Burglary

- First Degree – Class 1 Felony
  Burglary while armed with a deadly weapon AND causing serious bodily injury
- Second Degree – Class 2 Felony
  Burglary while armed with a deadly weapon OR causing serious bodily injury

- Third Degree – Class 3 Felony
  Burglary with the intent to commit murder, rape, robbery or arson
- Fourth Degree – Class 5 Felony
  Burglary with the intent to commit any other felony, or larceny, or assault and battery
- Fifth Degree – Class 6 Felony
  Burglary with the intent to commit any other misdemeanor

Larceny

- First Degree Grand Larceny – Class 3 Felony
  Chattel of $25,000 or more
- Second Degree Grand Larceny – Class 5 Felony
  Chattel of $10,000 – $24,999
  Theft from a person of $5 or more
  Theft of an automobile, any value less than $25,000
- Third Degree Grand Larceny – Class 6 Felony
  Chattel of $500 - $9,999
  Credit card theft
  Firearm(s) theft (unless value of firearm warrants higher degree)

Felony Sex Crimes

- Taking indecent liberties with a child by a person in a custodial or supervisory relationship – Class 6 Felony (previously a Class 1 misdemeanor)
- Eliminate marital exceptions for forcible sodomy and object sexual penetration

Assault

Expect for Second Degree Assault, there are no changes in the penalty structures for assault offenses.

- First Degree – Class 1 Felony
  Aggravated malicious wounding/bodily injury, including injury that causes the involuntary termination of a pregnancy
- Second Degree – Class 2 Felony
  Malicious wounding/bodily injury of law enforcement officer, firefighter, etc; Malicious wounding by means of acid, lye, or caustic substance
- Third Degree – Class 3 Felony
  Malicious wounding/bodily injury; Poisoning or attempting to poison; Adulterating food, drink, cosmetics, etc. with the intent to cause injury
- Fourth Degree – Class 4 Felony
  Destroying a facility that contains infectious biological

agents or radioactive substances, with the intent to cause injury; Manufacturing, selling or distributing an infectious biological agent or radioactive substance with the intent to cause injury

- Fifth Degree – Class 5 Felony
  Possession of an infectious biological agent or radioactive substance with the intent to cause injury; Bodily injuries caused by prisoners or probationers
- Sixth Degree – Class 6 Felony
  Unlawful wounding/bodily injury; Unlawful wounding/bodily injury of law enforcement officer; Intent to injure by throwing object from a height; DUI maiming; Unlawful wounding by acid, lye, or caustic substance; Shooting, stabbing, or wounding in the commission of a felony; Hate crime assault and battery which results in bodily injury; Assault and battery on a law enforcement officer; Disarming a law enforcement officer of his firearm; Third conviction for domestic assault and battery

Arson[5]

- First Degree – Class 1 Felony
  Arson of a building or structure that involves serious bodily injury
- Second Degree – Class 2 Felony
  Arson of an occupied dwelling or church
- Third Degree – Class 3 Felony
  Arson of a public building, not a dwelling or church, when there is a person inside
- Fourth Degree – Class 4 Felony
  Arson of a public building, not a dwelling or church, when no persons are inside; Arson of an unoccupied dwelling or church; arson of any other building or structure, when no persons are inside, damage of $1000 or more; Arson of personal property, or crop, damage of $1000 or more
- Class 1 Misdemeanor
  Arson of any other building, when no persons are inside, damage of less than $1000; Arson of personal property, or crop, damage of less than $1000

Abduction[6]

- First Degree – Class 1 Felony

[5] Note: under the current law of arson, "occupied" and "a person inside" do not mean the same thing; this proposal will not change this substantive law.

[6] All attempts to commit abduction, and all accessories to an abduction, shall be punished according to §18.2-26 or §18.2-18.

Abduction with the intent to extort money, defile the victim, or if the victim is under 1 years of age, for the purpose of prostitution

- Second Degree – Class 3 Felony
  Abduction by a prisoner
- Third Degree – Class 5 Felony
  All other abductions except those involving parental abductions

BILL #2: Little Used Statutes

The Title 18.2 Sub-Committee examined little used statutes for possible repeal. The Crime Commission's bill identifies statutes that were used ten times or less since FY 1992. It should be noted that, the sub-committee did not consider deletion of any statute enacted within the previous five years.

The Virginia State Crime Commission recommends amendments to two statutes that have been "little used" in the past ten years:

- § 18.2-345 would become - Lewd and lascivious conduct in a public place.
- § 18.2-349. would become - Using vehicles to promote prostitution.

Additionally, the Crime Commission recommends repeal of thirteen statutes that have been "little used" in the past ten years:

- § 18.2-111.1. Conversion of military property by person discharged from national guard or naval militia.
- § 18.2-114. Sale, etc., of goods, etc., of another and failure to pay over proceeds.
- § 18.2-123. Dogs not permitted at large in Capitol Square.
- § 18.2-161. Trespassers forbidden to jump on or off railroad cars or trains.
- § 18.2-202. False statements by purchaser of real property as to use for personal residence.
- § 18.2-203. False statement or willful overvaluation of property for purpose of influencing lending institution.
- § 18.2-211. Unlawful use of words "Official Tourist Information" or similar language.
- § 18.2-351. Commitment of persons convicted of certain offenses; investigation and report; reduction of period.
- § 18.2-352. Examination and investigation of such persons; reports to committing court.
- § 18.2-353. Probation or release of such persons.
- § 18.2-358. Detaining male or female in bawdy place against his or her will.
- § 18.2-367. Conspiring to cause spouse to commit adultery.
- § 18.2-386. Showing previews of certain motion pictures.

BILL #3: Mandatory Minimum Punishment Statutes

The *Code of Virginia* currently has inconsistent language for the concept of a mandatory minimum punishment. The variations include:

- "minimum mandatory;"
- "mandatory minimum;"
- "minimum, mandatory;"
- "none of which may be suspended;"
- sentence "shall not be subject to suspension;" and,
- sentence "shall not be subject to suspension in whole or in part."

The Virginia State Crime Commission recommends amendments throughout the *Virginia Code* to use consistent language when describing mandatory minimum criminal sentences. A definition of mandatory minimum punishment will be added to the *Code* and language in various sections throughout the *Code* is conformed. The recommended definition is:

> § 18.2-12.1. Mandatory minimum punishment; definition.
>
> *"Mandatory minimum" wherever it appears in this Code means, for purposes of imposing punishment upon a person convicted of a crime, that the court shall impose the entire term of confinement, the full amount of the fine and the complete requirement of community service prescribed by law. The court shall not suspend in full or in part any punishment described as mandatory minimum punishment.*

The following 19 statutes will be amended to comply with the new definition:

- ***§ 18.2-248. Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance prohibited; penalties.***
- ***§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.***
- ***§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.***
- ***§ 18.2-248.5. Illegal stimulants and steroids; penalty.***
- ***§ 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty.***
- ***§ 18.2-255.2. Prohibiting the sale of drugs on or near certain properties.***
- ***§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.***
- ***§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited.***
- ***§ 18.2-308.2. Possession or transportation of firearms, stun weapons, tasers or concealed weapons by convicted felons; penalties; petition for permit; when issued.***
- ***§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms; firearm safety information to be provided.***

- ***§ 18.2-308.4. Possession of firearms while in possession of certain controlled substances.***
- ***§ 19.2-120. Admission to bail.***
- ***§ 30-19.1:4. Increase in terms of imprisonment or commitment; fiscal impact statements; appropriations for operating costs.***
- ***§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.***
- ***§ 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense; prior conviction.***
- ***§ 46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.***
- ***§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception; petition for restoration of privilege.***
- ***§ 53.1-116. What records and policy jailer shall keep; how time deducted or added for felons and misdemeanants; payment of fine and costs by person committed to jail until he pays.***
- ***§ 53.1-203. Felonies by prisoners; penalties.***

BILL #4: Relocation of Procedural Statutes

The Title 18.2 Study Sub-Committee reviewed the criminal *Code* to identify procedural statutes that should be relocated to other appropriate titles of the *Code*. The Virginia State Crime Commission recommends the following statutes be relocated to Title 8.01 (Civil Procedure and Remedies) because they are procedural statutes for civil cases:

- §18.2-185. Evidence and presumptions in malicious prosecution actions after issuance of bad check.
- §18.2-105. Exemption from civil liability in connection with arrest or detention of suspected person.

The Virginia State Crime Commission recommends the following statute be relocated to §48-16 (Nuisances) because it is not a criminal statute:

- §18.2-258. Certain premises deemed common nuisance; penalty.

The Virginia State Crime Commission recommends the following eight statutes be relocated to Title 15.2 (Counties, Cities and Towns) because they authorize local governments to enact ordinances or to regulate certain behaviors and they are not criminal statutes.

- § 18.2-138.1. Willful and malicious damage to or defacement of public or private facilities; penalty.
- § 18.2-287. Counties may regulate carrying of loaded firearms on public highways.
- § 18.2-287.1. Transporting a loaded rifle or shotgun.
- § 18.2-308. Personal protection; carrying concealed weapons; when lawful to carry. *(Only one sentence of this section is moved.)*

- § 18.2-340.32. Authority of local governments; proceeds exempt from local taxation.
- § 18.2-389. Adoption of ordinances prohibiting obscenity.
- § 18.2-432. Counties, cities and towns authorized to regulate minors in public places of amusement.
- § 18.2-433. Regulation of dance halls by counties, cities and towns.

BILL #5: Relocation of Procedural Statutes

The Virginia State Crime Commission recommends the following 28 statutes be relocated to Title 19.2 (Criminal Procedure) because they involve forfeiture proceedings and are criminal offenses:

- § 18.2-246.13. Illegal cigarettes.
- § 18.2-246.14. Counterfeit cigarettes.
- § 18.2-283.1. Carrying weapon in courthouse.
- § 18.2-287.4. Carrying weapon in public place.
- § 18.2-308. Forfeiture of illegally concealed firearm.
- § 18.2-308.1:2. Forfeiture of firearm possessed by person adjudicated mentally incapacitated.
- § 18.2-308.1:3. Forfeiture of firearm possessed by involuntary committed person.
- § 18.2-308.1:4. Forfeiture of firearm possessed by persons subject to protective order.
- § 18.2-308.2. Firearm illegally possessed by felon.
- § 18.2-308.2:01. Firearms possessed by aliens.
- § 18.2-308.2:1. Selling firearms to felons, aliens, mentally incapacitated.
- § 18.2-308.4. Possession of firearms while possessing controlled substances.
- § 18.2-308.5. Possession of plastic firearm.
- § 18.2-308.7. Possession of firearms by persons under 18.
- § 18.2-374.1:1. Possession of child pornography.
- § 18.2-46.9. Property involved in terrorist attack.
- § 18.2-110. Automobiles used in connection with prostitution, grand larceny, or robbery.
- § 18.2-152.16. Property involved with computer crime.
- § 18.2-190.7. Unlawful communication devices.
- § 18.2-246.4. Property involved with drug dealing.
- § 18.2-249. Property involved illegal drug transactions.
- § 18.2-253. Disposal of controlled substances/paraphernalia.
- § 18.2-253.1. Disposal of controlled substances before trial.
- § 18.2-253.2. Law enforcement to maintain custody of controlled substances.
- § 18.2-265.4. Drug paraphernalia.
- § 18.2-310. Weapons used in commission of criminal offenses.

- § 18.2-336. Devices used in illegal gambling.
- § 18.2-374.2. Equipment used to produce child pornography.

BILL #6: Lawrence v. Texas

In June, the United States Supreme Court overturned a Texas statute that made homosexual sodomy a crime (Lawrence v. Texas, 123 S.Ct. 2472 (2003)). The Lawrence decision overturned the Court's earlier ruling in Bowers v. Hardwick, 478 U.S. 186 (1986), which applied to all sodomy, whether the participants were of the same sex. The holding of the Court means that a state cannot criminalize consensual sodomy. The Court notes that its holding "does not involve" minors, rape situations, public conduct or prostitution.

Based on the Court's ruling in Lawrence, Virginia's fornication statute (§ 18.2-344) would appear to be unconstitutional. The current language in the "crimes against nature statute" (§ 18.2-361) does not necessarily need to be changed. A new statute could be added to the *Code of Virginia* to emphasize that "carnal knowledge" crimes that occur in a public place are illegal. In the event an appellate court holds that the relevant portions of *Virginia Code* § 18.2-361 are unconstitutional and cannot be enforced, all other statutes that currently reference *Virginia Code* § 18.2-361 should be modified to ensure that they do not become "struck down" as well.

The Virginia State Crime Commission recommends the following statutes be amended to comply with the Lawrence v. Texas decision:

- a new statute, § 18.2-361.1, be added, to criminalize sodomy that occurs in a public place.
- § 18.2-345, co-habitation, be amended to limit its application to "open and gross" lewdness in a public place.
- §§ 18.2-370, 370.1 and 371 be amended to ensure that minors are protected from acts of carnal knowledge carried out by adults.
- § 18.2-387.2 be created to make a Class 1 misdemeanor crime for carnal acts while incarcerated in a correctional facility.
- § 18.2-370.1 be amended to create a new offense; carnal knowledge of a minor by a custodian or supervisor would be a Class 6 felony (1-5 years).

RESOLUTION #1: Study of Commonwealth's Attorneys

The Virginia State Crime Commission will sponsor legislation to study Commonwealth's Attorneys in the Commonwealth. In particular, the study resolution will direct the Crime Commission to examine:

- workload in Commonwealth's Attorney offices;
- training and technical support for Commonwealth' Attorneys;
- opportunities for continuing legal education;
- reasonable case loads per attorney;

- ability of Commonwealth's Attorney offices to hire and retain staff;
- comparison of state support for Virginia's Commonwealth's Attorneys compared to support in other states; and
- the appropriate role of localities in providing support for prosecutorial services.

RESOLUTION #2: 18.2 Implementation Activities

The Virginia State Crime Commission will sponsor a resolution specifying additional initiatives to be conducted prior to the July 1, 2005 implementation date for the substantive penalty adjustments to Title 18.2 (modifications to sentencing guidelines, training, form revisions, etc.). The Crime Commission will work with the Virginia Criminal Sentencing Commission and the Executive Secretary of the Supreme Court on the initiatives.

Virginia Assembly of Independent Baptists

Jack Knapp

Virginia Association of Criminal Defense Attorney

Steve Benjamin, President - Elect
Rick Diamond, Executive Director
Bruce R. Williamson, Jr., President

Virginia Criminal Sentencing Commission

Judge Robert Stewart, Chairman
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Supreme Court of Virginia

Robert N. Baldwin, Executive Secretary
Kathy Mays, Director of Judicial Planning

Virginia Trial Lawyers Association

Matthew P. Geary, Criminal Law Section
Michael Hu Young, Criminal Law Section

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John Garrett Kemper, Kemper Consulting
George C. Peyton, Jr., Retail Merchants Association of Greater Richmond
Laurie Peterson, Virginia Retail Merchants Association

Virginia Women's Attorneys Association

Kathleen Dooley, President

Individuals

Karen Talbert, Lobbyist
Lane Kneedler, Esquire
Roy Sheer, Citizen
Bill Kincaid, Lobbyist

Organizations

Virginia Network for Victims & Witnesses of Crime
Virginians Aligned Against Sexual Assault
Virginians Against Domestic Violence

Attachment 1

House Joint Resolution 687

017973836

HOUSE JOINT RESOLUTION NO. 687

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rules
on February 19, 2001)

(Patron Prior to Substitute—Delegate McDonnell)

Directing the Virginia State Crime Commission to study the organization of and inconsistencies in Title 18.2 of the Code of Virginia, including the level and extent of penalties set forth therein and the reasoning thereof.

WHEREAS, Title 18.2 sets out the criminal laws of the Commonwealth and was last examined through a recodification 25 years ago; and

WHEREAS, many changes have been enacted during the intervening years, such as the creation of computer and other electronic crimes, crimes involving newly identified chemical substances and biological substances, and changes in penalties in recognition of changing public priorities; and

WHEREAS, a recent review of criminal penalties in the Code of Virginia shows some inconsistencies in the weight of those penalties when viewed as an overall scheme; and

WHEREAS, an examination of Title 18.2, including criminal penalties contained in other titles of the Code, is needed to reconcile these inconsistencies; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to study the organization of and inconsistencies in Title 18.2 of the Code of Virginia, including the level and extent of penalties set forth therein and the reasoning thereof.

In conducting its study, the Commission shall review the proportionality of the criminal penalties throughout the Code of Virginia and make recommendations for necessary amendments thereto, and shall recommend whether or not Title 18.2 should be rewritten at this time.

Technical assistance shall be provided by the Division of Legislative Services, the Virginia Code Commission, and any other agency of the Commonwealth, upon request.

The Virginia State Crime Commission shall complete its work in time to submit its findings and recommendations by October 20, 2002, to the Governor and the 2003 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

Official Use By Clerks

Agreed to By The House of Delegates		**Agreed to By The Senate**	
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

_____ _____

Clerk of the House of Delegates Clerk of the Senate

Attachment 2

2004 Introduced Legislation

a) House Bill 1053
b) House Bill 1054
c) House Bill 1055
d) House Bill 1058
e) House Bill 1059
f) House Bill 1060
g) House Joint Resolution 196
h) House Joint Resolution 225

House Bill 1053

040208204

HOUSE BILL NO. 1053

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice on February 13, 2004)

(Patron Prior to Substitute—Delegate Albo)

A Bill to amend and reenact §§ 8.01-44.4, 9.1-902, 9.1-908, 9.1-910, 16.1-69.48:1, 16.1-260, 16.1-269.1, 16.1-301, 17.1-275.1, 17.1-275.2, 17.1-275.7, 17.1-805, 18.2-9, 18.2-10, 18.2-25, 18.2-31, 18.2-32, 18.2-46.1, 18.2-46.5, 18.2-46.6, 18.2-49, 18.2-49.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-57, 18.2-57.02, 18.2-57.2, 18.2-67.1, 18.2-67.2, 18.2-67.9, 18.2-67.10, 18.2-128, 18.2-144, 18.2-147.1, 18.2-289, 18.2-300, 18.2-370.2, 18.2-427, 18.2-481, 19.2-163, 19.2-215.1, 19.2-218.1, 19.2-218.2, 19.2-264.4, 19.2-270.1, 19.2-297.1, 19.2-298.01, 19.2-299, 19.2-303.4, 19.2-327.2, 19.2-327.3, 19.2-335, 19.2-336, 53.1-40.01, 53.1-131.2, 53.1-151, 54.1-2989, 63.2-1719 and 63.2-1726 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 18.2-47.1 through 18.2-47.5, and by adding sections numbered 18.2-48.01, 18.2-48.02, 18.2-51.01 through 18.2-51.05, 18.2-52.01, 18.2-52.02, and to repeal sections 18.2-47, 18.2-48, 18.2-48.1,18.2-51, 18.2-51.1, 18.2-51.2, and 18.2-67.2:1 of the Code of Virginia, relating to various crimes and penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-44.4, 9.1-902, 9.1-908, 9.1-910, 16.1-69.48:1, 16.1-260, 16.1-269.1, 16.1-301, 17.1-275.1, 17.1-275.2, 17.1-275.7, 17.1-805, 18.2-9, 18.2-10, 18.2-25, 18.2-31, 18.2-32, 18.2-46.1, 18.2-46.5, 18.2-46.6, 18.2-49, 18.2-49.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-57, 18.2-57.02, 18.2-57.2, 18.2-67.1, 18.2-67.2, 18.2-67.9, 18.2-67.10, 18.2-128, 18.2-144, 18.2-147.1, 18.2-289, 18.2-300, 18.2-370.2, 18.2-427, 18.2-481, 19.2-163, 19.2-215.1, 19.2-218.1, 19.2-218.2, 19.2-264.4, 19.2-270.1, 19.2-297.1, 19.2-298.01, 19.2-299, 19.2-303.4, 19.2-327.2, 19.2-327.3, 19.2-335, 19.2-336, 53.1-40.01, 53.1-131.2, 53.1-151, 54.1-2989, 63.2-525, 63.2-1719 and 63.2-1726 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 18.2-47.1 through 18.2-47.5, 18.2-48.01, 18.2-48.02, 18.2-51.01 through 18.2-51.05, and 18.2-52.01 and 18.2-52.02 as follows:

§ 8.01-44.4. Action for shoplifting and employee theft.

A. A merchant may recover a civil judgment against any adult or emancipated minor who shoplifts from that merchant for two times the actual cost of the merchandise to the merchant, but in no event an amount less than ~~fifty dollars~~ *$50*. However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than $350.

B. A merchant may recover a civil judgment against any person who commits employee theft for two times the actual cost of the merchandise to the merchant, but in no event an amount less than ~~fifty dollars~~*$50*. However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than $350.

C. The prevailing party in any action brought pursuant to this section shall be entitled to reasonable attorneys' fees and costs not to exceed $150.

D. A conviction of or a plea of guilty to a violation of any other statute is not a prerequisite to commencement of a civil action pursuant to this section or enforcement of a judgment. No action may be initiated under this section if any criminal action has been initiated against the perpetrator for the alleged offense under §§ 18.2-95~~,~~ *through* 18.2-96, 18.2-102.1, or § 18.2-103 or any other criminal offense defined under subsection F. However, nothing herein shall preclude a merchant from nonsuiting the civil action brought pursuant to this section and proceeding criminally under §§ 18.2-95~~,~~ *through* 18.2-96, 18.2-102.1 or § 18.2-103 or any other criminal offense defined under subsection F.

E. Prior to the commencement of any action under this section, a merchant may demand, in writing, that an individual who may be civilly liable under this section make appropriate payment to the merchant in consideration for the merchant's agreement not to commence any legal action under this section.

F. For purposes of this section:

"Employee theft" means the removal of any merchandise or cash from the premises of the merchant's establishment or the concealment of any merchandise or cash by a person employed by a merchant without the consent of the merchant and with the purpose or intent of appropriating the merchandise or cash to the employee's own use without full payment.

"Shoplift" means any one or more of the following acts committed by a person without the consent of the merchant and with the purpose or intent of appropriating merchandise to that person's own use without payment, obtaining merchandise at less than its stated sales price, or otherwise depriving a merchant of all or any part of the value or use of merchandise: (i) removing any merchandise from the

premises of the merchant's establishment; (ii) concealing any merchandise; (iii) substituting, altering, removing, or disfiguring any label or price tag; (iv) transferring any merchandise from a container in which that merchandise is displayed or packaged to any other container; (v) disarming any alarm tag attached to any merchandise; or (vi) obtaining or attempting to obtain possession of any merchandise by charging that merchandise to another person without the authority of that person or by charging that merchandise to a fictitious person.

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" means:

1. A violation or attempted violation of §§ 18.2-63, 18.2-64.1, *former* 18.2-67.2:1, *former §* 18.2-90 with the intent to commit rape, § 18.2-374.1 or subsection D of § 18.2-374.1:1; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) subsection C of § 18.2-67.5 or (iii) § 18.2-386.1;

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, clause (i) or (iii) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361 or § 18.2-366;

3. A violation of Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code; or

4. A "sexually violent offense."

"Sexually violent offense" means a violation or attempted violation of:

1. Clause (ii) of § 18.2-48, §§ 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.3, subsections A and B of § 18.2-67.5, § 18.2-370 or § 18.2-370.1; or

2. Sections 18.2-63, 18.2-64.1, *former* 18.2-67.2:1, *former* § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) or (iii) of § 18.2-48, §§ 18.2-361, 18.2-366, or § 18.2-374.1. Conviction of an offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted of any two or more such offenses, provided that person had been at liberty between such convictions.

B. "Offense for which registration is required" and "sexually violent offense" shall also include any similar offense under the laws of the United States or any political subdivision thereof.

§ 9.1-908. Duration of registration requirement.

Any person required to register or reregister shall be required to register for a period of 10 years from the date of initial registration, except that any person who has been convicted of (i) any sexually violent offense, or (ii) *former* § 18.2-67.2:1 shall have a continuing duty to reregister for life.

Any period of confinement in a federal, state or local correctional facility, hospital or any other institution or facility during the otherwise applicable 10-year period shall toll the registration period and the duty to reregister shall be extended. Persons confined in a federal, state, or local correctional facility shall not be required to reregister until released from custody.

§ 9.1-910. Removal of name and information from Registry.

A. Any person required to register, other than a person who has been convicted of any (i) sexually violent offense, (ii) two or more offenses for which registration is required or (iii) a violation of *former* § 18.2-67.2:1, may petition the circuit court in which he was convicted or the circuit court in the jurisdiction where he then resides for removal of his name and all identifying information from the Registry. A petition may not be filed earlier than 10 years after the date of initial registration. The court shall hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. If, after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at least 24 months from the date of the denial to file a new petition for removal from the Registry.

B. The State Police shall remove from the Registry the name of any person and all identifying information upon receipt of an order granting a petition pursuant to subsection A or at the end of the period for which the person is required to register under § 9.1-908.

§ 16.1-69.48:1. Fixed fee for misdemeanors, traffic infractions and other violations in district court; additional fees to be added.

A. Assessment of the fees provided for in this section shall be based on: (i) an appearance for court hearing in which there has been a finding of guilty; (ii) a written appearance with waiver of court hearing and entry of guilty plea; (iii) for a defendant failing to appear, a trial in his or her absence resulting in a finding of guilty; (iv) an appearance for court hearing in which the court requires that the defendant successfully complete traffic school or a driver improvement clinic, in lieu of a finding of guilty; or (v) a deferral of proceedings pursuant to §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, ~~18.2-67.2:1,~~ 18.2-251 or § 19.2-303.2.

In addition to any other fee prescribed by this section, a fee of $20 shall be taxed as costs whenever a defendant fails to appear, unless, after a hearing requested by such person, good cause is shown for

such failure to appear. No defendant with multiple charges arising from a single incident shall be taxed the fee provided in this section more than once for a single appearance or trial in absence related to that incident. A defendant with charges which arise from separate incidents shall be taxed a fee for each incident even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

In addition to the fixed fees assessed pursuant to this section, in the appropriate cases, the clerk shall also assess any costs otherwise specifically provided by statute.

B. In misdemeanors tried in district court, except for those proceedings provided for in subsection C, there shall be assessed as court costs a fixed fee of $59. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund)(.593220);
2. Virginia Crime Victim-Witness Fund (.050847);
3. Regional Criminal Justice Training Academies Fund (.016949);
4. Courthouse Construction/Maintenance Fund (.033898);
5. Criminal Injuries Compensation Fund (.101694);
6. Intensified Drug Enforcement Jurisdiction Fund (.067796); and
7. Sentencing/supervision fee (General Fund) (.135593)

C. In criminal actions and proceedings in district court for a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, there shall be assessed as court costs a fixed fee of $134. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund)(.261194);
2. Virginia Crime Victim-Witness Fund (.022388);
3. Regional Criminal Justice Training Academies Fund (.007462);
4. Courthouse Construction/Maintenance Fund (.014925);
5. Criminal Injuries Compensation Fund (.044776);
6. Intensified Drug Enforcement Jurisdiction Fund (.029850);
7. Drug Offender Assessment Fund(.559701); and
8. Forensic laboratory fee and sentencing/supervision fee (General Fund) (.059701)

D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of $49. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.795918);
2. Virginia Crime Victim-Witness Fund (.061224);
3. Regional Criminal Justice Training Academies Fund (.020408);
4. Courthouse Construction/Maintenance Fund (.040816); and
5. Intensified Drug Enforcement Jurisdiction Fund (.081632).

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All

communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated in need of supervision or delinquent. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated in need of supervision or delinquent.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the court. The intake officer may defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake officer may proceed informally only if the juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents, guardian or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian or other person standing in loco parentis participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer shall file the petition.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241 will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law, or (iv) family abuse has occurred and a protective order is being sought pursuant to §§ 16.1-253.1, 16.1-253.4 or § 16.1-279.1. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition.

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services

or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. After a petition is filed alleging that a juvenile committed an act which would be a crime if committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93; or

9. Robbery pursuant to § 18.2-58.

Promptly after filing a petition the intake officer shall also mail notice, by first-class mail, to the superintendent. The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations or animal control violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision H of § 16.1-241.

3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and

a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

§ 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

A. Except as provided in subsections B and C, if a juvenile ~~fourteen~~ *14* years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent, guardian, legal custodian or other person standing in loco parentis; or attorney;

2. The juvenile court finds that probable cause exists to believe that the juvenile committed the delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an adult;

3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the evidence; and

4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

a. The juvenile's age;

b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than ~~twenty~~ *20* years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;

d. The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;

e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional maturity; and

j. The juvenile's physical condition and physical maturity.

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the factors specified in subdivision A 4 of this section.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~fourteen~~ *14* years of age or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40, or aggravated malicious wounding in violation of § ~~18.2-51.2~~*18.2-51.01*.

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~fourteen~~ *14* years of age or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § ~~18.2-51~~*18.2-51.01 or § 18.2-51.02*, malicious wounding of a law-enforcement officer in violation of § ~~18.2-51.1~~*18.2-51.04*

or § 18.2-51.05, felonious poisoning in violation of § 18.2-54.1, adulteration of products in violation of § 18.2-54.1, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

If the court does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

If the court finds that the juvenile was not ~~fourteen~~ *14* years of age or older at the time of the alleged commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have not been met, the case shall proceed as otherwise provided for by law.

E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

§ 17.1-275.1. Fixed felony fee.

Upon conviction of any and each felony charge or upon a deferred disposition of proceedings in circuit court in the case of any and each felony disposition deferred pursuant to the terms and conditions of §§ 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, ~~18.2-67.2:1,~~ or § 18.2-251, there shall be assessed as court costs a fee of $350, to be known as the fixed felony fee.

The amount collected, in whole or in part, for the fixed felony fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Sentencing/supervision fee (General Fund) (.5041143);
2. Forensic science fund (.1107143);
3. Court reporter fund (.0950571);
4. Witness expenses/expert witness fund (.0057143);
5. Virginia Crime Victim-Witness Fund (.0085714);
6. Intensified Drug Enforcement Jurisdiction Fund (.0114286);
7. Criminal Injuries Compensation Fund (.0857143);
8. Commonwealth's attorney fund (state share) (.0214286);
9. Commonwealth's attorney fund (local share) (.0214286);
10. Regional Criminal Justice Academy Training Fund (.0028571);
11. Warrant fee (.0342857);
12. Courthouse construction/maintenance fund (.0057143); and
13. Clerk of the circuit court (.0929714).

§ 17.1-275.2. Fixed fee for felony reduced to misdemeanor.

In circuit court, upon the conviction of a person of any and each misdemeanor reduced from a felony charge, or upon a deferred disposition of proceedings in the case of any and each misdemeanor reduced from a felony charge and deferred pursuant to the terms and conditions of §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, ~~18.2-67.2:1,~~ or § 19.2-303.2, there shall be assessed as court costs a fee of $202, to be known as the fixed fee for felony reduced to misdemeanor. However, this section shall not apply to those proceedings provided for in § 17.1-275.8.

The amount collected, in whole or in part, for the fixed fee for felony reduced to misdemeanor shall be apportioned to the following funds in the fractional amounts designated:

1. Sentencing/supervision fee (General Fund) (.1904950);
2. Forensic science fund (.1918317);
3. Court reporter fund (.1647030);
4. Witness expenses/expert witness fund (.0099010);
5. Virginia Crime Victim-Witness Fund (.0148515);
6. Intensified Drug Enforcement Jurisdiction Fund (.0198020);

7. Criminal Injuries Compensation Fund (.0990099);
8. Commonwealth's attorney fund (state share) (.0371287);
9. Commonwealth's attorney fund (local share) (.0371287);
10. Regional Criminal Justice Academy Training Fund (.0049505);
11. Warrant fee (.0594059);
12. Courthouse construction/maintenance fund (.0099010); and
13. Clerk of the circuit court (.1608911).

§ 17.1-275.7. Fixed misdemeanor fee.

In circuit court, upon (i) conviction of any and each misdemeanor, not originally charged as a felony, (ii) a deferred disposition of proceedings in the case of any and each misdemeanor not originally charged as a felony and deferred pursuant to the terms and conditions of §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, ~~18.2-67.2:1,~~ or § 19.2-303.2, or (iii) any and each conviction of a traffic infraction or referral to a driver improvement clinic or traffic school in lieu of a finding of guilt for a traffic infraction, there shall be assessed as court costs a fee of $70, to be known as the fixed misdemeanor fee. However, this section shall not apply to those proceedings provided for in § 17.1-275.8. This fee shall be in addition to any fee assessed in the district court.

The amount collected, in whole or in part, for the fixed misdemeanor fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Sentencing/supervision fee (General Fund) (.0142857);
2. Witness expenses/expert witness fee (General Fund) (.0285714);
3. Virginia Crime Victim-Witness Fund (.0428571);
4. Intensified Drug Enforcement Jurisdiction Fund (.0571429);
5. Criminal Injuries Compensation Fund (.2857143);
6. Commonwealth's Attorney Fund (state share) (.0357143);
7. Commonwealth's Attorney Fund (local share) (.0357143);
8. Regional Criminal Justice Academy Training Fund (.0142857);
9. Warrant fee, as prescribed by § 17.1-272 (.1714286);
10. Courthouse Construction/Maintenance Fund (.0285714); and
11. Clerk of the circuit court (.2857143).

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery, shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of ~~forty~~ *40* years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than ~~forty~~ *40* years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving or distributing, or possessing with the intent to manufacture, sell, give or distribute a Schedule I or II controlled substance shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent

felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2 or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years, and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories.

C. For purposes of this chapter, violent felony offenses shall include any violation of §§ 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or § 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or § 18.2-41; any Class 5 felony violation of ~~§ 18.2-47~~*§§ 18.2-47.1 through 18.2-47.5*; any felony violation of §§ ~~18.2-48,~~ ~~18.2-48.1~~*18.2-48.01 and 18.2-48.02* or § 18.2-49; any violation of §§ ~~18.2-51,~~ ~~18.2-51.1,~~ ~~18.2-51.2~~*18.2-51.01 through 18.2-51.05*, 18.2-51.3, 18.2-51.4, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or § 18.2-55; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or § 18.2-58.1; any felony violation of § 18.2-60.1 or § 18.2-60.3; any violation of §§ 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, *former* 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or § 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92 or § 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any violation of subsection B of § 18.2-280; any violation of §§ 18.2-281, 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of subsection A of § 18.2-300; any felony violation of §§ 18.2-308.1 and 18.2-308.2; any violation of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or § 18.2-312; any violation of subdivision (2) or (3) of § 18.2-355; any violation of § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of §§ 18.2-368, 18.2-370 or § 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or § 18.2-406; any violation of §§ 18.2-408, 18.2-413, 18.2-414 or § 18.2-433.2; any felony violation of §§ 18.2-460, 18.2-474.1 or § 18.2-477.1; any violation of §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485; any violation of § 53.1-203; or any conspiracy or attempt to commit any offense specified in this subsection, and any substantially similar offense under the laws of any state, the District of Columbia, the United States or its territories.

§ 18.2-9. Classification of criminal offenses.

~~(1)~~ *A.* Felonies are classified, for the purposes of punishment and sentencing, into ~~six~~ *seven* classes:

Capital felony

~~(a)~~ Class 1 felony

~~(b)~~ Class 2 felony

~~(c)~~ Class 3 felony

~~(d)~~ Class 4 felony

~~(e)~~ Class 5 felony

~~(f)~~ Class 6 felony.

~~(2)~~ *B.* Misdemeanors are classified, for the purposes of punishment and sentencing, into four classes:

~~(a)~~ Class 1 misdemeanor

~~(b)~~ Class 2 misdemeanor

~~(c)~~ Class 3 misdemeanor

~~(d)~~ Class 4 misdemeanor.

§ 18.2-10. Punishment for conviction of felony.

The authorized punishments for conviction of a felony are:

(a) For ~~Class 1~~ *capital* felonies, death, if the person so convicted was 16 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than $100,000. If the person was under 16 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than $100,000.

(b) For Class ~~2~~ *1* felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than $100,000.

(b1) For Class 2 felonies, a term of imprisonment of not less than five years nor more than 40 years and, subject to subdivision (g), a fine of not more than $100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than $100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than $100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both.

(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 12 months and a fine of not more than $2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in ~~Class 1~~ *Capital* felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

§ 18.2-25. Attempts to commit capital offenses; how punished.

~~If any~~ *Any* person *who* attempts to commit an offense which is punishable with death, ~~he shall be~~ *is* guilty of a Class ~~2~~ *1* felony.

§ 18.2-31. Capital murder defined; punishment.

The following offenses shall constitute capital murder, punishable as a ~~Class 1~~ *capital* felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration;

6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in § 9.1-101 or any law-enforcement officer of another state or the United States having the power to arrest for a felony under the laws of such state or the United States, when such killing is for the purpose of interfering with the performance of his official duties;

7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction;

8. The willful, deliberate, and premeditated killing of more than one person within a three-year period;

9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such killing is for the purpose of furthering the commission or attempted commission of such violation;

10. The willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined in ~~subsection I of~~ § 18.2-248;

11. The willful, deliberate and premeditated killing of a pregnant woman by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth;

12. The willful, deliberate and premeditated killing of a person under the age of ~~fourteen~~ *14* by a person age ~~twenty-one~~ *21* or older; and

13. The willful, deliberate and premeditated killing of any person by another in the commission of or attempted commission of an act of terrorism as defined in § 18.2-46.4.

If any one or more subsections, sentences, or parts of this section shall be judged unconstitutional or invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

§ 18.2-32. First and second degree murder defined; punishment.

Murder, other than capital murder, by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit, arson, rape, forcible sodomy, inanimate or animate object sexual penetration, robbery, burglary or abduction, except as provided in § 18.2-31, is murder ~~of~~ *in* the first degree, ~~punishable as~~ a Class ~~2~~ *1* felony.

All murder other than capital murder and murder in the first degree is murder of the second degree and is ~~punishable by confinement in a state correctional facility for not less than five nor more than forty years~~ *a Class 2 felony.*

§ 18.2-46.1. Definitions.

As used in this article unless the context requires otherwise or it is otherwise provided:

"Act of violence" means those felony offenses described in subsection A of § 19.2-297.1.

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more predicate criminal acts, (ii) which has an identifiable name or identifying sign or symbol, and (iii) whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

"Pattern of criminal gang activity" means commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such predicate criminal acts (i) were not part of a common act, transaction or scheme or (ii) were committed by two or more persons who are members of, or belong to, the same criminal street gang.

"Predicate criminal act" means an act of violence, any violation of §§ ~~18.2-51,~~ ~~18.2-51.1~~*18.2-51.01 through 18.2-51.05*, 18.2-52, 18.2-53, 18.2-55, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, or any violation of a local ordinance adopted pursuant to § 18.2-138.1.

§ 18.2-46.5. Committing, conspiring and aiding and abetting acts of terrorism prohibited; penalty.

A. Any person who commits or conspires to commit, or aids and abets the commission of an act of terrorism, as defined in § 18.2-46.4, is guilty of a Class ~~2~~ *1* felony if the base offense of such act of terrorism may be punished by life imprisonment, or a term of imprisonment of not less than ~~twenty~~ *20* years.

B. Any person who commits, conspires to commit, or aids and abets the commission of an act of terrorism, as defined in § 18.2-46.4, is guilty of a Class 3 felony if the maximum penalty for the base offense of such act of terrorism is a term of imprisonment or incarceration in jail of less than ~~twenty~~ *20* years.

§ 18.2-46.6. Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device prohibited; penalty.

A. Any person who, with the intent to commit an act of terrorism, possesses, uses, sells, gives, distributes or manufactures (i) a weapon of terrorism or (ii) a "fire bomb," "explosive material," or "device," as those terms are defined in § 18.2-85, is guilty of a Class ~~2~~ *1* felony.

B. Any person who, with the intent to commit an act of terrorism, possesses, uses, sells, gives, distributes or manufactures any device or material that by its design, construction, content or characteristics appears to be or appears to contain a (i) weapon of terrorism or (ii) a "fire bomb," "explosive material," or "device," as those terms are defined in § 18.2-85, but that is an imitation of any such weapon of terrorism, "fire bomb," "explosive material," or "device" is guilty of a Class 3 felony.

C. Any person who, with the intent to (i) intimidate the civilian population, (ii) influence the conduct or activities of the government of the United States, a state or locality through intimidation, (iii) compel the emergency evacuation of any place of assembly, building or other structure or any means of mass transportation, or (iv) place any person in reasonable apprehension of bodily harm, uses, sells, gives, distributes or manufactures any device or material that by its design, construction, content or characteristics appears to be or appears to contain a weapon of terrorism, but that is an imitation of any such weapon of terrorism is guilty of a Class 6 felony.

§ 18.2-47.1. Abduction; definitions.

"Abduct" means to seize, take, transport, detain or secrete the person of another, by force, intimidation or deception and without legal justification or excuse, with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge.

The terms "abduct," "abduction" and "kidnapping" shall be synonymous in this Code.

The provisions of this article shall not apply to any law-enforcement officer in the performance of his duty.

§ 18.2-47.2. Abduction in the first degree.

Any person who abducts (i) another person with the intent to extort money or pecuniary benefit, (ii) another person with intent to defile such person, or (iii) any child under 16 years of age for the purpose of concubinage or prostitution, is guilty of a Class 1 felony.

§ 18.2-47.3. Abduction in the second degree.

Any person who abducts another person is guilty of a Class 5 felony.

§ 18.2-47.4. Felony abduction by a parent.

Any abduction committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, where the person abducted is removed from the Commonwealth by the abducting parent, is a Class 6 felony in addition to being punishable as contempt of court.

§ 18.2-47.5. Abduction by a parent.

Any abduction committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending is a Class 1 misdemeanor in addition to being punishable as contempt of court.

§ 18.2-48.01. Abduction by a prisoner.

Any prisoner in a state, local or community correctional facility, or in the custody of an employee thereof, or who has escaped from any such facility or from any person in charge of such prisoner, who abducts or takes any person hostage is guilty of a Class 3 felony.

§ 18.2-48.02. Abduction for which no punishment prescribed.

A person who commits an abduction for which no punishment is otherwise prescribed is guilty of abduction in the second degree, punishable as defined in § 18.2-47.2.

§ 18.2-49. Threatening abduction.

Any person who ~~(1)~~ threatens~~, or attempts,~~ to abduct any other person with intent to extort money, or pecuniary benefit, or ~~(2) assists or aids in the abduction of, or threatens to abduct, any person~~ with the intent to defile such person, or ~~(3) assists or aids in the abduction of, or~~ threatens to abduct~~,~~ any female under ~~sixteen~~ *16* years of age for the purpose of concubinage or prostitution~~, shall be~~ *is* guilty of a Class 5 felony.

§ 18.2-49.1. Violation of court order regarding custody and visitation; penalty.

A. Any person who knowingly, wrongfully and intentionally withholds a child from either of a child's parents or other legal guardian in a clear and significant violation of a court order respecting the custody or visitation of such child, provided such child is withheld outside of the Commonwealth, is guilty of a Class 6 felony.

B. Any person who knowingly, wrongfully and intentionally engages in conduct that constitutes a clear and significant violation of a court order respecting the custody or visitation of a child is guilty of a Class 3 misdemeanor upon conviction of a first offense.

C. Any person who commits a second violation of this section within 12 months of a first conviction is guilty of a Class 2 misdemeanor~~, and~~.

~~any~~ *D. Any* person who commits a third violation ~~occurring~~ *of this section* within 24 months of the first conviction is guilty of a Class 1 misdemeanor.

§ 18.2-51.01. Felonious assault in the first degree.

Any person who commits a felonious assault by maliciously shooting, stabbing, cutting or wounding any other person or by any means causing bodily injury, with the intent to maim, disfigure, disable or kill, or cause the involuntary termination of the other person's pregnancy, and the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment is guilty of a Class 1 felony.

For purposes of this statute, the involuntary termination of a woman's pregnancy shall be deemed a severe injury and a permanent and significant physical impairment.

§ 18.2-51.02. Felonious assault in the second degree.

Any person who commits a felonious assault by maliciously shooting, stabbing, cutting or wounding any other person or by any means causing bodily injury, with the intent to maim, disfigure, disable or kill, is guilty of a Class 3 felony.

§ 18.2-51.03. Felonious assault in the third degree.

Any person who commits a felonious assault by unlawfully shooting, stabbing, cutting or wounding any other person or by any means causing bodily injury, with the intent to maim, disfigure, disable or kill, is guilty of a Class 6 felony.

§ 18.2-51.04. Felonious assault of a law-enforcement officer in the first degree.

A person is guilty of felonious assault of a law-enforcement officer in the first degree when he maliciously causes bodily injury to another by any means including the means set out in § 18.2-52, with intent to maim, disfigure, disable or kill, and knowing or having reason to know that such other person

is a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties.

For purposes of this statute, the terms "law-enforcement officer," "firefighter," "search and rescue personnel," and "emergency medical services personnel" shall have the same definitions as in § 18.2-51.05.

Felonious assault of a law-enforcement officer in the first degree is a Class 2 felony. Upon conviction, the sentence of such person shall include a mandatory, minimum term of imprisonment of two years.

Nothing in this section shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

The provisions of §§ 18.2-51.02, 18.2-51.03 and 18.2-51.05 shall be deemed to provide lesser included offenses hereof.

§ 18.2-51.05. Felonious assault of a law-enforcement officer in the second degree; lesser included offense.

A person is guilty of felonious assault of a law-enforcement officer in the second degree when he unlawfully causes bodily injury to another by any means including the means set out in § 18.2-52, with intent to maim, disfigure, disable or kill, and knowing or having reason to know that such other person is a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties.

For purposes of this statute, "law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; and auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

"Firefighter" means (i) salaried firefighters, including special forest wardens designated pursuant to § 10.1-1135, emergency medical technicians, lifesaving and rescue squad members, and arson investigators and (ii) volunteer firefighters and lifesaving or rescue squad members, if the governing body of the political subdivision in which the principal office of such volunteer fire company or volunteer lifesaving or rescue squad is located has adopted a resolution acknowledging such volunteer fire company or volunteer lifesaving and rescue squad as employees for purposes of this title.

"Search and rescue personnel" means any employee or member of a search and rescue organization that is authorized by a resolution or ordinance duly adopted by the governing body of any county, city or town of the Commonwealth.

"Emergency service rescue personnel" means any person responsible for the direct provision of emergency medical services in a given medical emergency including all persons who could be described as attendants, attendants-in-charge, or operators.

Felonious assault of a law-enforcement officer in the second degree is a Class 6 felony. Upon conviction, the sentence of such person shall include a mandatory, minimum term of imprisonment of one year.

Nothing in this section shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

The provisions of § 18.2-51.03 shall be deemed to provide lesser included offenses hereof.

§ 18.2-52.01. Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire.

Any person who maliciously causes any other person bodily injury by means of any acid, lye or other caustic substance or agent or by use of any explosive or fire is guilty of a Class 2 felony.

§ 18.2-52.02. Unlawful bodily injury by means of any caustic substance, etc.

Any person who unlawfully causes any other person bodily injury by means of any acid, lye or other caustic substance or agent or by use of any explosive or fire is guilty of a Class 6 felony.

§ 18.2-53. Shooting, etc., in committing or attempting a felony.

~~If any~~ *Any* person *who*, in the commission of, or attempt to commit, *a* felony, unlawfully ~~shoot, stab, cut or wound~~ *shoots, stabs, cuts or wounds* another person ~~he shall be~~ *is* guilty of a Class 6 felony.

§ 18.2-53.1. Use or display of firearm in committing felony.

It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2, robbery,

carjacking, burglary, malicious wounding as defined in § ~~18.2-51~~*18.2-51.01 or § 18.2-51.02*, malicious bodily injury to a law-enforcement officer as defined in § ~~18.2-51.1~~*18.2-51.04 or § 18.2-51.05*, aggravated malicious wounding as defined in § ~~18.2-51.2~~*18.2-51.01*, malicious wounding by mob as defined in § 18.2-41 or abduction. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a term of imprisonment of three years for a first conviction, and for a term of five years for a second or subsequent conviction under the provisions of this section. Notwithstanding any other provision of law, the sentence prescribed for a violation of the provisions of this section shall not be suspended in whole or in part, nor shall anyone convicted hereunder be placed on probation. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

§ 18.2-54.1. Attempts to poison.

~~If any~~ *Any* person *who* administers or attempts to administer any poison or destructive substance in food, drink, prescription or over-the-counter medicine, or otherwise, or poisons any spring, well, or reservoir of water with intent to kill or injure another person, ~~he shall be~~ *is* guilty of a Class 3 felony.

§ 18.2-54.2. Adulteration of food, drink, drugs, cosmetics, etc.; penalty.

Any person who adulterates or causes to be adulterated any food, drink, prescription or over-the-counter medicine, cosmetic or other substance with the intent to kill or injure any individual who ingests, inhales or uses such substance ~~shall be~~ *is* guilty of a Class 3 felony.

§ 18.2-55. Bodily injuries caused by prisoners, state juvenile probationers and state and local adult probationers or adult parolees.

A. It shall be unlawful for a person confined in a state, local or regional correctional facility as defined in § 53.1-1; in a secure facility or detention home as defined in § 16.1-228 or in any facility designed for the secure detention of juveniles; or while in the custody of an employee thereof to knowingly and willfully inflict bodily injury on:

1. An employee thereof, ~~or~~

2. Any other person lawfully admitted to such facility, except another prisoner or person held in legal custody, ~~or~~

3. Any person who is supervising or working with prisoners or persons held in legal custody, or

4. Any such employee or other person while such prisoner or person held in legal custody is committing any act in violation of § 53.1-203.

B. It shall be unlawful for an accused, probationer or parolee under the supervision of, or being investigated by, (i) a probation or parole officer whose powers and duties are defined in § 16.1-237 or § 53.1-145, (ii) a local pretrial services officer associated with a program established pursuant to Article 5 (§ 19.2-152.2) of Chapter 9 of Title 19.2, or (iii) a local probation officer associated with a program established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, to knowingly and willfully inflict bodily injury on such officer while he is in the performance of his duty, knowing or having reason to know that the officer is engaged in the performance of his duty.

Any person ~~violating~~ *who violates* any provision of this section is guilty of a Class 5 felony.

§ 18.2-57. Assault and battery.

A. Any person who commits a simple assault or assault and battery ~~shall be~~ *is* guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, ~~thirty~~ *30* days of which shall not be suspended, in whole or in part.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person ~~shall be~~ *is* guilty of a Class 6 felony, and the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, ~~thirty~~ *30* days of which shall not be suspended, in whole or in part.

C. In addition, ~~if~~ any person *who* commits an assault or an assault and battery against another knowing or having reason to know that such other person is a law-enforcement officer as defined hereinafter, a correctional officer as defined in § 53.1-1, a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department or a firefighter as defined in § 65.2-102, engaged in the performance of his public duties as such, such person ~~shall be~~ *is* guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory, minimum term of confinement for six months which mandatory, minimum term shall not be suspended, in whole or in part.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, ~~if~~ any person *who* commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance

counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he ~~shall be~~ *is* guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a mandatory, minimum sentence of ~~fifteen~~ *15* days in jail, two days of which shall not be suspended in whole or in part. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory, minimum sentence of confinement of six months which shall not be suspended in whole or in part.

E. As used in this section:

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth, and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, and game wardens appointed pursuant to § 29.1-200, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

"School security officer" means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

F. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any teacher, principal, assistant principal, guidance counselor, or school security officer, in the course and scope of his acting official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a teacher, principal, assistant principal, guidance counselor, or school security officer at the time of the event.

§ 18.2-57.02. Disarming a law-enforcement or correctional officer; penalty.

Any person who knows or has reason to know a person is a law-enforcement officer as defined in § 18.2-57, a correctional officer as defined in § 53.1-1, or a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department, who is engaged in the performance of his duties as such and, with the intent to impede or prevent any such person from performing his official duties, knowingly and without the person's permission removes a chemical irritant weapon or impact weapon from the possession of the officer or deprives the officer of the use of the weapon is guilty of a Class 1 misdemeanor. However, if the weapon removed or deprived in violation of this section is the officer's firearm or stun weapon, he ~~shall be~~ *is* guilty of a Class 6 felony. A violation of this section shall constitute a separate and distinct offense.

§ 18.2-57.2. Assault and battery against a family or household member.

A. Any person who commits an assault and battery against a family or household member ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

B. On a third or subsequent conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that (i) such person has been previously convicted twice of assault and battery against a family or household member, or of a similar offense under the law of any other jurisdiction, within ~~ten~~ *10* years of the third or subsequent offense, and (ii) each such assault and battery occurred on different dates, such person ~~shall be~~ *is* guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in § 16.1-228 applies to this section.

§ 18.2-67.1. Forcible sodomy.

A. An accused ~~shall be~~ *is* guilty of forcible sodomy if he or she engages in cunnilingus, fellatio,

anallingus, or anal intercourse with a complaining witness who is not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person, and

1. The complaining witness is less than ~~thirteen~~ *13* years of age, or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. An accused ~~shall be~~ *is* guilty of forcible sodomy if (i) he or she engages in cunnilingus, fellatio, anallingus, or anal intercourse with his or her spouse, and (ii) such act is accomplished against the will of the spouse, by force, threat or intimidation of or against the spouse or another person.

~~However, no person shall be found guilty under this subsection unless, at the time of the alleged offense, (i) the spouses were living separate and apart, or (ii) the defendant caused bodily injury to the spouse by the use of force or violence.~~

C. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than five years. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation of subsection B may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

D. Upon a finding of guilt under subsection B in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-67.2. Object sexual penetration; definitions and penalties.

A. An accused ~~shall be~~ *is* guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness who is not his or her spouse with any object, other than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own body with an object or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person or to penetrate, or to be penetrated by, an animal, and

1. The complaining witness is less than ~~thirteen~~ *13* years of age, or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. An accused ~~shall be~~ *is* guilty of inanimate or animate object sexual penetration if (i) he or she penetrates the labia majora or anus of his or her spouse with any object other than for a bona fide medical purpose, or causes such spouse to so penetrate his or her own body with an object and (ii) such act is accomplished against the spouse's will by force, threat or intimidation of or against the spouse or another person.

~~However, no person shall be found guilty under this subsection unless, at the time of the alleged offense, (i) the spouses were living separate and apart or (ii) the defendant caused bodily injury to the spouse by the use of force or violence.~~

C. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than five years. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation of subsection B may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

D. Upon a finding of guilt under subsection B in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the

proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-67.9. Testimony by child victims and witnesses using two-way closed-circuit television.

A. The provisions of this section shall apply to an alleged victim who was fourteen years of age or under at the time of the alleged offense and is sixteen or under at the time of the trial and to a witness who is fourteen years of age or under at the time of the trial.

In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child, relating to a violation of the laws pertaining to kidnapping (§ 18.2-47.*1* et seq.), criminal sexual assault (§ 18.2-61 et seq.) or family offenses pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, or involving an alleged murder of a person of any age, the attorney for the Commonwealth or the defendant may apply for an order from the court that the testimony of the alleged victim or a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The party seeking such order shall apply for the order at least seven days before the trial date or at least seven days before such other preliminary proceeding to which the order is to apply.

B. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsection A if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;

2. The child's substantial inability to communicate about the offense; or

3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the Commonwealth and the defendant's attorney shall be present in the room with the child, and the child shall be subject to direct and cross-examination. The only other persons allowed to be present in the room with the child during his testimony shall be those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

E. Notwithstanding any other provision of law, none of the cost of the two-way closed-circuit television shall be assessed against the defendant.

§ 18.2-67.10. General definitions.

As used in this article:

1. "Complaining witness" means the person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, ~~marital~~ ~~sexual~~ ~~assault,~~ aggravated sexual battery, or sexual battery.

2. "Intimate parts" means the genitalia, anus, groin, breast, or buttocks of any person.

3. "Mental incapacity" means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.

4. "Physical helplessness" means unconsciousness or any other condition existing at the time of an offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.

5. The complaining witness's "prior sexual conduct" means any sexual conduct on the part of the complaining witness which took place before the conclusion of the trial, excluding the conduct involved in the offense alleged under this article.

6. "Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;

b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or

c. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

§ 18.2-128. Trespass upon church or school property.

A. Any person who, without the consent of some person authorized to give such consent, goes or

enters upon, in the nighttime, the premises or property of any church or upon any school property for any purpose other than to attend a meeting or service held or conducted in such church or school property, ~~shall be~~ *is* guilty of a Class 3 misdemeanor.

B. It shall be unlawful for any person, whether or not a church member or student, to enter upon or remain upon any church or school property in violation of (i) any direction to vacate the property by a person authorized to give such direction or (ii) any posted notice which contains such information, posted at a place where it reasonably may be seen. Each time such person enters upon or remains on the posted premises or after such direction that person refuses to vacate such property, it shall constitute a separate offense.

A violation of this subsection ~~shall be~~ *is* punishable as a Class 1 misdemeanor~~, except that any~~.

C. Any person, other than a parent, who violates this subsection on school property with the intent to abduct a student ~~shall be~~ *is* guilty of a Class 6 felony.

~~C~~ *D.* For purposes of this section: (i) "school property" includes a school bus as defined in § 46.2-100 and (ii) "church" means any place of worship and includes any educational building or community center owned or leased by a church.

§ 18.2-144. Maiming, killing or poisoning animals, fowl, etc.

A. Except as otherwise provided for by law, ~~if~~ any person *who* maliciously ~~shoot, stab, wound~~ *shoots, stabs, wounds* or otherwise ~~cause~~ *causes* bodily injury to, or ~~administer~~ *administers* poison to or ~~expose~~ *exposes* poison with intent that it be taken by, any horse, mule, pony, cattle, swine or other livestock of another, with intent to maim, disfigure, disable or kill the same, or if he ~~do~~ *does* any of the foregoing acts to any animal of his own with intent to defraud any insurer thereof, he ~~shall be~~ *is* guilty of a Class 5 felony.

~~If any person do~~ *B. Any person who does* any of the foregoing acts to any fowl or to any companion animal with any of the aforesaid intents~~, he shall be~~ *is* guilty of a Class 1 misdemeanor~~, except that any~~.

C. Any second or subsequent offense ~~shall be~~ *of subsection B is* a Class 6 felony if the current offense or any previous offense resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a violation of this section.

§ 18.2-147.1. Breaking and entering into railroad cars, motortrucks, aircraft, etc., or pipeline systems.

Any person who breaks the seal or lock of any railroad car, vessel, aircraft, motortruck, wagon or other vehicle or of any pipeline system, containing shipments of freight or express or other property, or breaks and enters any such vehicle or pipeline system with the intent to commit larceny or any felony therein ~~shall be~~ *is* guilty of a Class 4 *5* felony; ~~provided,~~ however, ~~that~~ if such person is armed with a firearm at the time of such breaking and entering, he ~~shall be~~ *is* guilty of a Class ~~3~~ *4* felony.

§ 18.2-289. Use of machine gun for crime of violence.

Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a Class ~~2~~ *1* felony.

§ 18.2-300. Possession or use of "sawed-off" shotgun or rifle.

A. Possession or use of a "sawed-off" shotgun or "sawed-off" rifle in the perpetration or attempted perpetration of a crime of violence is a Class ~~2~~ *1* felony.

B. Possession or use of a "sawed-off" shotgun or "sawed-off" rifle for any other purpose, except as permitted by this article and official use by those persons permitted possession by § 18.2-303, is a Class 4 felony.

§ 18.2-370.2. Sex offenses prohibiting proximity to children.

A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation of (i) ~~subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48~~*clause (i) or (ii) of § 18.2-47.2, § 18.2-47.3,* subsection B of § 18.2-361, or subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii) subsection A (iii) of § 18.2-61, §§ 18.2-63, 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1 of § 18.2-67.2, or subdivision A 1 or A 2 (a) of § 18.2-67.3, or §§ 18.2-370, 18.2-370.1, clause (ii) of § 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379.

B. Every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school. A violation of this section is punishable as a Class 6 felony.

§ 18.2-427. Use of profane, threatening or indecent language over public airways.

~~If any~~ *Any* person ~~shall use~~ *who uses* obscene, vulgar, profane, lewd, lascivious, or indecent language, or ~~make~~ *makes* any suggestion or proposal of an obscene nature, ~~or threaten any illegal or immoral act~~ with the intent to coerce, intimidate, or harass any person, over any telephone or citizens band radio, in this Commonwealth, ~~he shall be~~ *is* guilty of a Class ~~1~~ *3* misdemeanor. *Any person who threatens any illegal or immoral act with such intent over any telephone or citizens band radio, in this Commonwealth, is guilty of a Class 1 misdemeanor.*

§ 18.2-481. Treason defined; how proved and punished.

Treason shall consist only in:

(1) Levying war against the Commonwealth;

(2) Adhering to its enemies, giving them aid and comfort;

(3) Establishing, without authority of the legislature, any government within its limits separate from the existing government;

(4) Holding or executing, in such usurped government, any office, or professing allegiance or fidelity to it; or

(5) Resisting the execution of the laws under color of its authority.

Such treason, if proved by the testimony of two witnesses to the same overt act, or by confession in court, ~~shall be punishable as~~ *is* a Class ~~2~~ *1* felony.

§ 19.2-163. Compensation of court-appointed counsel.

Counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services in an amount fixed by each of the courts in which he appears according to the time and effort expended by him in the particular case, not to exceed the amounts specified in the following schedule:

1. In a district court, a sum not to exceed $120 or such other amount as may be provided by law; such amount shall be allowed in any case wherein counsel conducts the defense of a single charge against the indigent through to its conclusion or a charge of violation of probation at any hearing conducted under § 19.2-306, without a requirement for accounting of time devoted thereto; thereafter, compensation for additional charges against the same accused also conducted by the same counsel shall be allowed on the basis of additional time expended as to such additional charges;

2. In a circuit court (i) to defend a felony charge that may be punishable by death an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by confinement in the state correctional facility for a period of more than ~~twenty~~ *20* years, or a charge of violation of probation for such offense, a sum not to exceed $1,235; (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed $445; and (iv) to defend any misdemeanor charge punishable by confinement in jail or a charge of violation of probation for such offense, a sum not to exceed $158. In the event any case is required to be retried due to a mistrial for any cause or reversed on appeal, the court may allow an additional fee for each case in an amount not to exceed the amounts allowable in the initial trial. In the event counsel is appointed to defend an indigent charged with a felony that may be punishable by death, such counsel shall continue to receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a felony that may not be punishable by death, prior to final disposition of the case. In the event counsel is appointed to defend an indigent charged with any other felony, such counsel shall receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district court or circuit court.

The circuit or district court shall direct the payment of such reasonable expenses incurred by such court-appointed counsel as it deems appropriate under the circumstances of the case. Counsel appointed by the court to represent an indigent charged with repeated violations of the same section of the Code of Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such offenses are tried as part of the same judicial proceeding. The trial judge shall consider any guidelines established by the Supreme Court but shall have the sole discretion to fix the amount of compensation to be paid counsel appointed by the court to defend a felony charge that may be punishable by death.

The circuit or district court shall direct that the foregoing payments shall be paid out by the Commonwealth, if the defendant is charged with a violation of a statute, or by the county, city or town, if the defendant is charged with a violation of a county, city or town ordinance, to the attorney so appointed to defend such person as compensation for such defense.

Counsel representing a defendant charged with a ~~Class 1~~ *capital* felony may submit to the court, on a monthly basis, a statement of all costs incurred and fees charged by him in the case during that month. Whenever the total charges as are deemed reasonable by the court for which payment has not previously been made or requested exceed $1,000, the court may direct that payment be made as otherwise provided in this section.

When such directive is entered upon the order book of the court, the Commonwealth, county, city or town, as the case may be, shall provide for the payment out of its treasury of the sum of money so specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected, the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. An abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by such court.

Any statement submitted by an attorney for payments due him for indigent representation or for

representation of a child pursuant to § 16.1-266 shall, after the submission of the statement, be forwarded forthwith by the clerk to the Commonwealth, county, city or town, as the case may be, responsible for payment.

For the purposes of this section, the defense of a case may be considered conducted through to its conclusion and an appointed counsel entitled to compensation for his services in the event an indigent accused fails to appear in court subject to a capias for his arrest or a show cause summons for his failure to appear and remains a fugitive from justice for one year following the issuance of the capias or the summons to show cause, and appointed counsel has appeared at a hearing on behalf of the accused.

§ 19.2-215.1. Functions of a multijurisdiction grand jury.

The functions of a multijurisdiction grand jury are:

1. To investigate any condition that involves or tends to promote criminal violations of:

a. Title 10.1 for which punishment as a felony is authorized;

b. § 13.1-520;

c. §§ 18.2-47.*1 through 18.2-47.5* ~~and 18.2-48~~;

d. §§ 18.2-111 and 18.2-112;

e. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2;

f. Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2;

g. Article 1 (§ 18.2-247 et seq.) and Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2;

h. Article 1 (§ 18.2-325 et seq.) and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or otherwise affecting gaming or gambling activity;

i. § 18.2-434, when violations occur before a multijurisdiction grand jury;

j. Article 2 (§ 18.2-438 et seq.) and Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2;

k. § 18.2-460 for which punishment as a felony is authorized;

l. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2;

m. Article 1 (§ 32.1-310 et seq.) of Chapter 9 of Title 32.1;

n. Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1;

o. Article 6 (§ 3.1-796.122 et seq.) of Chapter 27.4 of Title 3.1;

p. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

q. Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2; and

r. Any other provision of law when such condition is discovered in the course of an investigation that a multijurisdiction grand jury is otherwise authorized to undertake and to investigate any condition that involves or tends to promote any attempt, solicitation or conspiracy to violate the laws enumerated in this section.

2. To report evidence of any criminal offense enumerated in subdivision 1 to the attorney for the Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or investigated and, when appropriate, to the Attorney General.

3. To consider bills of indictment prepared by a special counsel to determine whether there is sufficient probable cause to return each such indictment as a "true bill." Only bills of indictment which allege an offense enumerated in subdivision 1 may be submitted to a multijurisdiction grand jury.

4. The provisions of this section shall not abrogate the authority of an attorney for the Commonwealth in a particular jurisdiction to determine the course of a prosecution in that jurisdiction.

§ 19.2-218.1. Preliminary hearings involving sexual crimes against spouses.

A. In any preliminary hearing of a charge against a person for a violation under subsection B of § 18.2-61, subsection B of § 18.2-67.1, *or* subsection B of § 18.2-67.2 ~~or § 18.2-67.2:1~~, upon a finding of probable cause the court may request that its court services unit, in consultation with any appropriate social services organization, local board of mental health and mental retardation, or other community mental health services organization, prepare a report analyzing the feasibility of providing counseling or other forms of therapy for the accused and the probability such treatment will be successful. Based upon this report and any other relevant evidence, the court may, ~~(i)~~ with the consent of the accused, the complaining witness and the attorney for the Commonwealth in any case involving a violation of subsection B of § 18.2-61, subsection B of § 18.2-67.1 or subsection B of § 18.2-67.2 ~~or (ii) with the consent of the accused and after consideration of the views of the complaining witness in any case involving a violation of § 18.2-67.2:1~~, authorize the accused to submit to and complete a designated course of counseling or therapy. In such case, the hearing shall be adjourned until such time as counseling or therapy is completed or terminated. Upon the completion of counseling or therapy by the accused and after consideration of a final evaluation to be furnished to the court by the person responsible for conducting such counseling or therapy and such further report of the court services unit as the court may require, and after consideration of the views of the complaining witness, the court, in its discretion, may discharge the accused if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

B. No statement or disclosure by the accused concerning the alleged offense made during counseling

or any other form of therapy ordered pursuant to this section or §§ 18.2-61, 18.2-67.1, 18.2-67.2, ~~18.2-67.2:1~~ or § 19.2-218.2 may be used against the accused in any trial as evidence, nor shall any evidence against the accused be admitted which was discovered through such statement or disclosure.

§ 19.2-218.2. Hearing before juvenile and domestic relations district court required for persons accused of certain violations against their spouses.

A. In any case involving a violation of subsection B of § 18.2-61, subsection B of § 18.2-67.1, *or* subsection B of § 18.2-67.2 ~~or § 18.2-67.2:1~~ where a preliminary hearing pursuant to § 19.2-218.1 has not been held prior to indictment or trial, the court shall refer the case to the appropriate juvenile and domestic relations district court for a hearing to determine whether counseling or therapy is appropriate prior to further disposition unless the hearing is waived in writing by the accused. The court conducting this hearing may order counseling or therapy for the accused in compliance with the guidelines set forth in § 19.2-218.1.

B. After such hearing pursuant to which the accused has completed counseling or therapy and upon the recommendation of the juvenile and domestic relations district court judge conducting the hearing, the judge of the circuit court may dismiss the charge with the consent of the attorney for the Commonwealth and if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 19.2-264.4. Sentence proceeding.

A. Upon a finding that the defendant is guilty of an offense which may be punishable by death, a proceeding shall be held which shall be limited to a determination as to whether the defendant shall be sentenced to death or life imprisonment. Upon request of the defendant, a jury shall be instructed that for all ~~Class 1~~ *capital* felony offenses committed after January 1, 1995, a defendant shall not be eligible for parole if sentenced to imprisonment for life. In case of trial by jury, where a sentence of death is not recommended, the defendant shall be sentenced to imprisonment for life.

A1. In any proceeding conducted pursuant to this section, the court shall permit the victim, as defined in § 19.2-11.01, upon the motion of the attorney for the Commonwealth, and with the consent of the victim, to testify in the presence of the accused regarding the impact of the offense upon the victim. The court shall limit the victim's testimony to the factors set forth in clauses (i) through (vi) of subsection A of § 19.2-299.1.

B. In cases of trial by jury, evidence may be presented as to any matter which the court deems relevant to sentence, except that reports under the provisions of § 19.2-299, or under any rule of court, shall not be admitted into evidence.

Evidence which may be admissible, subject to the rules of evidence governing admissibility, may include the circumstances surrounding the offense, the history and background of the defendant, and any other facts in mitigation of the offense. Facts in mitigation may include, but shall not be limited to, the following: (i) the defendant has no significant history of prior criminal activity, (ii) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, (iii) the victim was a participant in the defendant's conduct or consented to the act, (iv) at the time of the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was significantly impaired, (v) the age of the defendant at the time of the commission of the capital offense, or (vi) even if § 19.2-264.3:1.1 is inapplicable as a bar to the death penalty, the subaverage intellectual functioning of the defendant.

C. The penalty of death shall not be imposed unless the Commonwealth shall prove beyond a reasonable doubt that there is a probability based upon evidence of the prior history of the defendant or of the circumstances surrounding the commission of the offense of which he is accused that he would commit criminal acts of violence that would constitute a continuing serious threat to society, or that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim.

D. The verdict of the jury shall be in writing, and in one of the following forms:

(1) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and that (after consideration of his prior history that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society) or his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved (torture) (depravity of mind) (aggravated battery to the victim), and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

Signed _____ foreman"

or

(2) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and having considered all of the evidence in aggravation and mitigation of such offense, fix his punishment at (i) imprisonment for life; or (ii) imprisonment for life and a fine of $ _____

Signed _____ foreman"

E. In the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a sentence of imprisonment for life.

§ 19.2-270.1. Use of photographs as evidence in certain larceny and burglary prosecutions.

In any prosecution for larceny under the provisions of §§ 18.2-95, 18.2-96 or § 18.2-98, or for shoplifting under the provisions of § 18.2-103, or for burglary under the provisions of §§ 18.2-89, ~~18.2-90, 18.2-91 or § 18.2-92~~, photographs of the goods, merchandise, money or securities alleged to have been taken or converted shall be deemed competent evidence of such goods, merchandise, money or securities and shall be admissible in any proceeding, hearing or trial of the case to the same extent as if such goods, merchandise, money or securities had been introduced as evidence. Such photographs shall bear a written description of the goods, merchandise, money or securities alleged to have been taken or converted, the name of the owner of such goods, merchandise, money or securities and the manner of the identification of same by such owner, or the name of the place wherein the alleged offense occurred, the name of the accused, the name of the arresting or investigating police officer or conservator of the peace, the date of the photograph and the name of the photographer. Such writing shall be made under oath by the arresting or investigating police officer or conservator of the peace, and the photographs identified by the signature of the photographer. Upon the filing of such photograph and writing with the police authority or court holding such goods and merchandise as evidence, such goods or merchandise shall be returned to their owner, or the proprietor or manager of the store or establishment wherein the alleged offense occurred.

§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.

A. Any person convicted of two or more separate acts of violence when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction, shall, upon conviction of a third or subsequent act of violence, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

a. First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.);

b. Mob-related felonies under Article 2 (§ 18.2-38 et seq.);

c. Any kidnapping or abduction felony under Article 3 (§ 18.2-47.*1* et seq.);

d. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51.*01* et seq.);

e. Robbery under § 18.2-58 and carjacking under § 18.2-58.1;

f. Except as otherwise provided in § 18.2-67.5:2 or § 18.2-67.5:3, criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.); or

g. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79.

(ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this section.

B. Prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed under "act of violence" if such offense would be a felony if committed in the Commonwealth.

The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole and shall not be eligible for any good conduct allowance or any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section, other than a person who was sentenced under subsection A of § 18.2-67.5:3 for criminal sexual assault convictions specified in subdivision f, (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this subsection.

§ 19.2-298.01. Use of discretionary sentencing guidelines.

A. In all felony cases, other than ~~Class 1~~ *capital* felonies, the court shall (i) have presented to it the appropriate discretionary sentencing guidelines worksheets and (ii) review and consider the suitability of the applicable discretionary sentencing guidelines established pursuant to Chapter 8 (§ 17.1-800 et seq.) of Title 17.1. Before imposing sentence, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection. In cases tried by a jury, the jury shall not be presented any information regarding sentencing guidelines.

B. In any felony case, other than ~~Class 1~~ *capital* felonies, in which the court imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure.

C. In felony cases, other than ~~Class 1~~ *capital* felonies, tried by a jury and in felony cases tried by the court without a jury upon a plea of not guilty, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets. In felony cases tried upon a plea of guilty, including cases which are the subject of a plea agreement, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the accused, the court and the attorney for the Commonwealth, the worksheets shall be prepared by the attorney for the Commonwealth.

D. Except as provided in subsection E, discretionary sentencing guidelines worksheets prepared pursuant to this section shall be subject to the same distribution as presentence investigation reports prepared pursuant to subsection A of § 19.2-299.

E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days.

F. The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis of any other post-conviction relief.

G. The provisions of this section shall apply only to felony cases in which the offense is committed on or after January 1, 1995, and for which there are discretionary sentencing guidelines. For purposes of the discretionary sentencing guidelines only, a person sentenced 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 shall be deemed to be sentenced to a term of incarceration.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall, or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty, or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, ~~18.2-67.2:1,~~ 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-358, 18.2-361, 18.2-362, 18.2-366, 18.2-367, 18.2-368, 18.2-370, 18.2-370.1, or § 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of §§ 18.2-67.5, 18.2-67.5:2, or § 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a

form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

§ 19.2-303.4. Payment of costs when proceedings deferred and defendant placed on probation.

A circuit or district court, which has deferred further proceedings, without entering a judgment of guilt, and placed a defendant on probation subject to terms and conditions pursuant to §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, ~~18.2-67.2:1,~~ 18.2-251 or § 19.2-303.2, shall impose upon the defendant costs.

§ 19.2-327.2. Issuance of writ of actual innocence.

Notwithstanding any other provision of law or rule of court, upon a petition of a person incarcerated who was convicted of a felony upon a plea of not guilty, or for any person, regardless of the plea, sentenced to death, or convicted of (i) a ~~Class 1~~ *capital* felony, (ii) a Class ~~2~~ *1* felony or (iii) any felony for which the maximum penalty is imprisonment for life, the Supreme Court shall have the authority to issue writs of actual innocence under this chapter. The writ shall lie to the circuit court that entered the felony conviction; and that court shall have the authority to conduct hearings, as provided for in § 19.2-327.5, on such a petition as directed by order from the Supreme Court.

§ 19.2-327.3. Contents and form of the petition based on previously unknown or untested human biological evidence of actual innocence.

A. The petitioner shall allege categorically and with specificity, under oath, the following: (i) the crime for which the petitioner was convicted, and that such conviction was upon a plea of not guilty or that the person is under a sentence of death or convicted of (1) a ~~Class 1~~ *capital* felony, (2) a Class ~~2~~ *1* felony or (3) any felony for which the maximum penalty is imprisonment for life; (ii) that the petitioner is actually innocent of the crime for which he was convicted; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence; (iv) that the evidence was not previously known or available to the petitioner or his trial attorney of record at the time the conviction became final in the circuit court, or if known, the reason that the evidence was not subject to the scientific testing set forth in the petition; (v) the date the test results under § 19.2-327.1 became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney of record has filed the petition within 60 days of obtaining the test results under § 19.2-327.1; (vii) that the petitioner is currently incarcerated; (viii) the reason or reasons the evidence will prove that no rational trier of fact could have found proof of guilt beyond a reasonable doubt; and (ix) for any conviction that became final in the circuit court after June 30, 1996, that the evidence was not available for testing under § 9.1-121. The Supreme Court may issue a stay of execution pending proceedings under the petition. Nothing in this chapter shall constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to § 53.1-232.1 (iii) or (iv).

B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, appeals and their dispositions. A copy of any test results shall be filed with the petition. The petition shall be filed on a form provided by the Supreme Court. If the petitioner fails to submit a completed form, the court may dismiss the petition or return the petition to the prisoner pending the completion of such form. The petitioner shall be responsible for all statements contained in the petition. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution and conviction of perjury as provided for in § 18.2-434.

C. The Supreme Court shall not accept the petition unless it is accompanied by a duly executed return of service in the form of a verification that a copy of the petition and all attachments has been served on the attorney for the Commonwealth of the jurisdiction where the conviction occurred and the Attorney General or an acceptance of service signed by these officials, or any combination thereof. The Attorney General shall have 30 days after receipt of the record by the clerk of the Supreme Court in which to file a response to the petition. The response may contain a proffer of any evidence pertaining

to the guilt of the defendant that is not included in the record of the case, including evidence that was suppressed at trial.

D. The Supreme Court may, when the case has been before a trial or appellate court, inspect the record of any trial or appellate court action, and the Court may, in any case, award a writ of certiorari to the clerk of the respective court below, and have brought before the Court the whole record or any part of any record.

E. In any petition filed pursuant to this chapter, the defendant is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10 of this title.

§ 19.2-335. Judge of district court to certify to clerk of circuit court costs of proceedings in criminal cases before him.

A judge of a district court before whom there is any proceeding in a criminal case, including any proceeding which has been deferred upon probation of the defendant pursuant to §§ 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-67.2, ~~18.2-67.2:1,~~ 18.2-251 or § 19.2-303.2, shall certify to the clerk of the circuit court of his county or city, and a judge or court before whom there is, in a criminal case, any proceeding preliminary to conviction in another court, upon receiving information of the conviction from the clerk of the court wherein it is, shall certify to such clerk, all the expenses incident to such proceedings which are payable out of the state treasury.

§ 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor.

In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed on probation during deferral of the proceedings pursuant to §§ 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-67.2, ~~18.2-67.2:1,~~ 18.2-251 or § 19.2-303.2, or, if the conviction is in a district court, the clerk to which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified under § 19.2-335, and execution for the amount of such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339 et seq.) of this title shall apply thereto in like manner as if, on the day of completing the statement, there was a judgment in such court in favor of the Commonwealth against the accused for such amount as a fine. However, in any case in which an accused waives trial by jury, at least ~~ten~~ *10* days before trial, but the Commonwealth or the court trying the case refuses to so waive, then the cost of the jury shall not be included in such statement or judgment.

§ 53.1-40.01. Conditional release of geriatric prisoners.

Any person serving a sentence imposed upon a conviction for a felony offense, other than a ~~Class 1~~ *capital* felony, (i) who has reached the age of ~~sixty-five~~*65* or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of ~~sixty~~ *60* or older and who has served at least ~~ten~~ *10* years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this section.

§ 53.1-131.2. Assignment to a home/electronic incarceration program; payment to defray costs; escape; penalty.

A. Any court having jurisdiction for the trial of a person charged with a criminal offense, a traffic offense or an offense under Chapter 5 (§ 20-61 et seq.) of Title 20 may, if the defendant is convicted and sentenced to confinement in a state or local correctional facility, and if it appears to the court that such an offender is a suitable candidate for home/electronic incarceration, assign the offender to a home/electronic incarceration program as a condition of probation, if such program exists, under the supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole district office established pursuant to § 53.1-141. However, any offender who is convicted of any of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 shall not be eligible for participation in the home/electronic incarceration program: (i) first and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.); (ii) mob-related felonies under Article 2 (§ 18.2-38 et seq.); (iii) any kidnapping or abduction felony under Article 3 (§ 18.2-47.*1* et seq.); (iv) any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51.*01* et seq.); (v) robbery under § 18.2-58.1; or (vi) any criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.). The court may further authorize the offender's participation in work release employment or educational or other rehabilitative programs as defined in § 53.1-131. The court shall be notified in writing by the director or administrator of the program to which the offender is assigned of the offender's place of home/electronic incarceration, place of employment, and the location of any educational or rehabilitative program in which the offender participates.

B. In any city or county in which a home/electronic incarceration program established pursuant to this section is available, the court, subject to approval by the sheriff or the jail superintendent of a local or regional jail, may assign the accused to such a program pending trial if it appears to the court that the accused is a suitable candidate for home/electronic incarceration.

C. Any person who has been sentenced to jail or convicted and sentenced to confinement in prison but is actually serving his sentence in jail, after notice to the attorney for the Commonwealth of the

convicting jurisdiction, may be assigned by the sheriff to a home/electronic incarceration program under the supervision of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole office established pursuant to § 53.1-141. However, if the offender violates any provision of the terms of the home/electronic incarceration agreement, the offender may have the assignment revoked and, if revoked, shall be held in the jail facility to which he was originally sentenced. Such person shall be eligible if his term of confinement does not include a sentence for a conviction of a felony violent crime, a felony sexual offense, burglary or manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a Schedule I or Schedule II controlled substance. The court shall retain authority to remove the offender from such home/electronic incarceration program. The court which sentenced the offender shall be notified in writing by the sheriff or the administrator of a local or regional jail of the offender's place of home/electronic incarceration and place of employment or other rehabilitative program.

D. The Board may prescribe regulations to govern home/electronic incarceration programs.

E. Any offender or accused assigned to such a program by the court or sheriff who, without proper authority or just cause, leaves his place of home/electronic incarceration, the area to which he has been assigned to work or attend educational or other rehabilitative programs, or the vehicle or route of travel involved in his going to or returning from such place, is guilty of a Class 1 misdemeanor. An offender or accused who is found guilty of a violation of this section shall be ineligible for further participation in a home/electronic incarceration program during his current term of confinement.

F. The director or administrator of a home/electronic incarceration program who also operates a residential program may remove an offender from a home/electronic incarceration program and place him in such residential program if the offender commits a noncriminal program violation. The court shall be notified of the violation and of the placement of the offender in the residential program.

G. The director or administrator of a home/electronic incarceration program shall charge the offender or accused a fee for participating in the program to pay for the cost of home/electronic incarceration equipment. The offender or accused shall be required to pay the program for any damage to the equipment which is in his possession or for failure to return the equipment to the program.

H. Any wages earned by an offender or accused assigned to a home/electronic incarceration program and participating in work release shall be paid to the director or administrator after standard payroll deductions required by law. Distribution of the money collected shall be made in the following order of priority to:

1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be disbursed according to the terms of such order;

2. Pay any fines, restitution or costs as ordered by the court;

3. Pay travel and other such expenses made necessary by his work release employment or participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

4. Defray the offender's keep.

The balance shall be credited to the offender's account or sent to his family in an amount the offender so chooses.

The Board of Corrections shall promulgate regulations governing the receipt of wages paid to persons participating in such programs, the withholding of payments and the disbursement of appropriate funds.

I. For the purposes of this section, "sheriff" means the sheriff of the jurisdiction where the person charged with the criminal offense was convicted and sentenced, provided that the sheriff may designate a deputy sheriff or regional jail administrator to assign offenders to home/electronic incarceration programs pursuant to this section.

§ 53.1-151. Eligibility for parole.

A. Except as herein otherwise provided, every person convicted of a felony and sentenced and committed by a court under the laws of this Commonwealth to the Department of Corrections, whether or not such person is physically received at a Department of Corrections facility, or as provided for in § 19.2-308.1:

1. For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment imposed, or after serving ~~twelve~~ *12* years of the term of imprisonment imposed if one-fourth of the term of imprisonment imposed is more than ~~twelve~~ *12* years;

2. For the second time, shall be eligible for parole after serving one-third of the term of imprisonment imposed, or after serving ~~thirteen~~ *13* years of the term of imprisonment imposed if one-third of the term of imprisonment imposed is more than ~~thirteen~~ *13* years;

3. For the third time, shall be eligible for parole after serving one-half of the term of imprisonment imposed, or after serving ~~fourteen~~ *14* years of the term of imprisonment imposed if one-half of the term of imprisonment imposed is more than ~~fourteen~~ *14* years;

4. For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the term of imprisonment imposed, or after serving ~~fifteen~~ *15* years of the term of imprisonment imposed if

three-fourths of the term of imprisonment imposed is more than ~~fifteen~~ *15* years.

For the purposes of subdivisions 2, 3 and 4 of subsection A and for the purposes of subsections B1 and B2, prior commitments shall include commitments to any correctional facility under the laws of any state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction, kidnapping, burglary, felonious assault or wounding, or manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, if such would be a felony if committed in the Commonwealth. Only prior commitments interrupted by a person's being at liberty, or resulting from the commission of a felony while in a correctional facility of the Commonwealth, of any other state or of the United States, shall be included in determining the number of times such person has been convicted, sentenced and committed for the purposes of subdivisions 2, 3 and 4 of subsection A. "At liberty" as used herein shall include not only freedom without any legal restraints, but shall also include release pending trial, sentencing or appeal, or release on probation or parole or escape. In the case of terms of imprisonment to be served consecutively, the total time imposed shall constitute the term of the imprisonment; in the case of terms of imprisonment to be served concurrently, the longest term imposed shall be the term of imprisonment. In any case in which a parolee commits an offense while on parole, only the sentence imposed for such offense and not the sentence or sentences or any part thereof from which he was paroled shall constitute the term of imprisonment.

The Department of Corrections shall make all reasonable efforts to determine prior convictions and commitments of each inmate for the enumerated offenses.

B. Persons sentenced to die shall not be eligible for parole. Any person sentenced to life imprisonment who escapes from a correctional facility or from any person in charge of his custody shall not be eligible for parole.

B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape or (iii) robbery by the presenting of firearms or other deadly weapon, or any combination of the offenses specified in subdivisions (i), (ii) or (iii) when such offenses were not part of a common act, transaction or scheme shall not be eligible for parole. In the event of a determination by the Department of Corrections that an individual is not eligible for parole under this subsection, the Parole Board may in its discretion, review that determination, and make a determination for parole eligibility pursuant to regulations promulgated by it for that purpose. Any determination of the Parole Board of parole eligibility thereby shall supersede any prior determination of parole ineligibility by the Department of Corrections under this subsection.

B2. Any person convicted of three separate felony offenses of manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in this section between each conviction, shall not be eligible for parole.

C. Any person sentenced to life imprisonment for the first time shall be eligible for parole after serving ~~fifteen~~ *15* years, except that if such sentence was for a ~~Class 1~~ *capital* felony violation or the first degree murder of a child under the age of eight in violation of § 18.2-32, he shall be eligible for parole after serving ~~twenty-five~~*25* years, unless he is ineligible for parole pursuant to subsection B1 or B2.

D. A person who has been sentenced to two or more life sentences, except a person to whom the provisions of subsection B1, B2, or E of this section are applicable, shall be eligible for parole after serving ~~twenty~~ *20* years of imprisonment, except that if either such sentence, or both, was or were for a ~~Class 1~~ *capital* felony violation, and he is not otherwise ineligible for parole pursuant to subsection B1, B2, or E of this section, he shall be eligible for parole only after serving ~~thirty~~ *30* years.

E. A person convicted of an offense and sentenced to life imprisonment after being paroled from a previous life sentence shall not be eligible for parole.

E1. Any person who has been convicted of murder in the first degree, rape in violation of § 18.2-61, forcible sodomy, animate or inanimate object sexual penetration or aggravated sexual battery and who has been sentenced to a term of years shall, upon a first commitment to the Department of Corrections, be eligible for parole after serving two-thirds of the term of imprisonment imposed or after serving ~~fourteen~~ *14* years of the term of imprisonment imposed if two-thirds of the term of imprisonment imposed is more than ~~fourteen~~ *14* years. If such person has been previously committed to the Department of Corrections, such person shall be eligible for parole after serving three-fourths of the term of imprisonment imposed or after serving ~~fifteen~~ *15* years of the terms of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than ~~fifteen~~ *15* years.

F. If the sentence of a person convicted of a felony and sentenced to the Department is partially suspended, he shall be eligible for parole based on the portion of such sentence execution which was not suspended.

G. The eligibility time for parole as specified in subsections A, C and D of this section may be modified as provided in §§ 53.1-191, 53.1-197 and 53.1-198.

H. The time for eligibility for parole as specified in subsection D of this section shall apply only to those criminal acts committed on or after July 1, 1976.

I. The provisions of subdivisions 2, 3 and 4 of subsection A shall apply only to persons committed to the Department of Corrections on or after July 1, 1979, but such persons' convictions and commitments shall include all felony convictions and commitments without regard to the date of such convictions and commitments.

§ 54.1-2989. Willful destruction, concealment, etc., of declaration or revocation; penalties.

Any person who willfully conceals, cancels, defaces, obliterates, or damages the advance directive or Durable Do Not Resuscitate Order of another without the declarant's or patient's consent or the consent of the person authorized to consent for the patient or who falsifies or forges a revocation of the advance directive or Durable Do Not Resuscitate Order of another, thereby causing life-prolonging procedures to be utilized in contravention of the previously expressed intent of the patient or a Durable Do Not Resuscitate Order ~~shall be~~ *is* guilty of a Class 6 felony.

Any person who falsifies or forges the advance directive or Durable Do Not Resuscitate Order of another, or willfully conceals or withholds personal knowledge of the revocation of an advance directive or Durable Do Not Resuscitate Order, with the intent to cause a withholding or withdrawal of life-prolonging procedures, contrary to the wishes of the declarant or a patient, and thereby, because of such act, directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, ~~shall be~~ *is* guilty of a Class ~~2~~ *1* felony.

§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in ~~subsection A of § 18.2-47~~*§§18.2-47.1 through 18.2-47.5, §18.2-48.01 or §18.2-48.02*, ~~abduction for immoral purposes as set out in § 18.2-48,~~ assaults and bodily woundings as set out in Article 4 (§ 18.2-51.*01* et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77.*1* et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction and (ii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

2. That §§ 18.2-47, 18.2-48, 18.2-48.1, 18.2-51, 18.2-51.1, 18.2-51.2, and 18.2-67.2:1 of the Code of Virginia are repealed.

3. That the Virginia State Crime Commission shall work with the Virginia Criminal Sentencing Commission to determine what changes need to be made to the sentencing guidelines to incorporate the provisions of this bill.

4. That the provisions of the first and second enactment clauses of this act shall become effective on July 1, 2005.

5. That the provisions of this act may result in a net increase in periods of imprisonment or

commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $_____ for periods of imprisonment in state adult correctional facilities and $_____ for periods of commitment to the custody of the Department of Juvenile Justice.

House Bill 1054

040990204

HOUSE BILL NO. 1054

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice on February 13, 2004)

(Patron Prior to Substitute—Delegate Albo)

A BILL to amend and reenact §§ 9.1-902, 15.2-1724, 16.1-272, 17.1-805, 18.2-62, 18.2-63, 18.2-67.5:2, 18.2-67.8, 18.2-345, 18.2-346, 18.2-346.1, 18.2-348, 18.2-356, 18.2-359, 18.2-360, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-371, 18.2-374.3, 19.2-268.2, 19.2-271.2, 19.2-299, 32.1-58, 32.1-126.01, 32.1-162.9:1, 37.1-20.3, 37.1-183.3, 37.1-197.2, 63.2-1719, 63.2-1726, and 63.2-1727 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 8 of Title 18.2 a section numbered 18.2-361.1 and to repeal § 18.2-344 of the Code of Virginia, relating to sex offenses; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902, 15.2-1724, 16.1-272, 17.1-805, 18.2-62, 18.2-63, 18.2-67.5:2, 18.2-67.8, 18.2-345, 18.2-346, 18.2-346.1, 18.2-348, 18.2-356, 18.2-359, 18.2-360, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-371, 18.2-374.3, 19.2-268.2, 19.2-271.2, 19.2-299, 32.1-58, 32.1-126.01, 32.1-162.9:1, 37.1-20.3, 37.1-183.3, 37.1-197.2, 63.2-1719, 63.2-1726, and 63.2-1727of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding in Article 3 of Chapter 8 of Title 18.2 a section numbered 18.2-361.1 as follows:

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" means:

1. A violation or attempted violation of §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, 18.2-90 with the intent to commit rape, § 18.2-374.1 or subsection D of § 18.2-374.1:1; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) subsection C of § 18.2-67.5 or (iii) § 18.2-386.1;

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, clause (i) or (iii) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, *§ 18.2-361.1* or § 18.2-366;

3. A violation of Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code; or

4. A "sexually violent offense."

"Sexually violent offense" means a violation or attempted violation of:

1. Clause (ii) of § 18.2-48, §§ 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.3, subsections A and B of § 18.2-67.5, § 18.2-370 or § 18.2-370.1; or

2. Sections 18.2-63, 18.2-64.1, 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) or (iii) of § 18.2-48, §§ 18.2-361, *subsections A and C of § 18.2-361.1*, §18.2-366, or § 18.2-374.1. Conviction of an offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted of any two or more such offenses, provided that person had been at liberty between such convictions.

B. "Offense for which registration is required" and "sexually violent offense" shall also include any similar offense under the laws of the United States or any political subdivision thereof.

§ 15.2-1724. Police and other officers may be sent beyond territorial limits.

Whenever the necessity arises (i) for the enforcement of laws designed to control or prohibit the use or sale of controlled drugs as defined in § 54.1-3401 or laws contained in Article 3 (§ ~~18.2-344~~ *18.2-345* et seq.) of Chapter 8 of Title 18.2, (ii) in response to any law-enforcement emergency involving any immediate threat to life or public safety, (iii) during the execution of the provisions of § 37.1-67.01 or § 37.1-67.1 relating to orders for temporary detention or emergency custody for mental health evaluation or (iv) during any emergency resulting from the existence of a state of war, internal disorder, or fire, flood, epidemic or other public disaster, the police officers and other officers, agents and employees of any locality and the police of any state-supported institution of higher learning appointed pursuant to § 23-233 may, together with all necessary equipment, lawfully go or be sent beyond the territorial limits of such locality or such state-supported institution of higher learning to any point within or without the Commonwealth to assist in meeting such emergency or need, or while enroute to a part of the jurisdiction which is only accessible by roads outside the jurisdiction. However, the police of any state-supported institution of higher learning may be sent only to a locality within the Commonwealth, or locality outside the Commonwealth, whose boundaries are contiguous with the locality in which such institution is located. No member of a police force of any state-supported institution of higher learning shall be sent beyond the territorial limits of the locality in which such

institution is located unless such member has met the requirements established by the Department of Criminal Justice Services as provided in subdivision 2 (i) of § 9.1-102.

In such event the acts performed for such purpose by such police officers or other officers, agents or employees and the expenditures made for such purpose by such locality or a state-supported institution of higher learning shall be deemed conclusively to be for a public and governmental purpose, and all of the immunities from liability enjoyed by a locality or a state-supported institution of higher learning when acting through its police officers or other officers, agents or employees for a public or governmental purpose within its territorial limits shall be enjoyed by it to the same extent when such locality or a state-supported institution of higher learning within the Commonwealth is so acting, under this section or under other lawful authority, beyond its territorial limits.

The police officers and other officers, agents and employees of any locality or a state-supported institution of higher learning when acting hereunder or under other lawful authority beyond the territorial limits of such locality or such state-supported institution of higher learning shall have all of the immunities from liability and exemptions from laws, ordinances and regulations and shall have all of the pension, relief, disability, workers' compensation and other benefits enjoyed by them while performing their respective duties within the territorial limits of such locality or such state-supported institution of higher learning.

§ 16.1-272. Power of circuit court over juvenile offender.

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge other than capital murder, the court shall fix the sentence without the intervention of a jury.

1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case including, but not limited to, commitment under subdivision 14 of § 16.1-278.8 or § 16.1-285.1.

2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

3. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer.

C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361, *subsection C of § 18.2-361.1* or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery, shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously

been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of ~~forty~~ *40* years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than ~~forty~~ *40* years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving or distributing, or possessing with the intent to manufacture, sell, give or distribute a Schedule I or II controlled substance shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2 or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years, and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories.

C. For purposes of this chapter, violent felony offenses shall include any violation of §§ 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or § 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or § 18.2-41; any Class 5 felony violation of § 18.2-47; any felony violation of §§ 18.2-48, 18.2-48.1 or § 18.2-49; any violation of §§ 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or § 18.2-55; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or § 18.2-58.1; any felony violation of § 18.2-60.1 or § 18.2-60.3; any violation of §§ 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or § 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92 or § 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any violation of subsection B of § 18.2-280; any violation of §§ 18.2-281, 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of subsection A of § 18.2-300; any felony violation of §§ 18.2-308.1 and 18.2-308.2; any violation of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or § 18.2-312; any violation of subdivision (2) or (3) of § 18.2-355; any violation of § 18.2-358; any violation of subsection B of § 18.2-361*; any violation of subsection C of § 18.2-361.1*; any violation of subsection B of § 18.2-366; any violation of §§ 18.2-368, 18.2-370 or § 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or § 18.2-406; any violation of §§ 18.2-408, 18.2-413, 18.2-414 or § 18.2-433.2; any felony violation of §§ 18.2-460, 18.2-474.1 or § 18.2-477.1; any violation of §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485; any violation of § 53.1-203; or any conspiracy or attempt to commit any offense specified in this subsection, and any substantially similar offense under the laws of any state, the District of Columbia, the United States or its territories.

§ 18.2-62. Testing of certain persons for human immunodeficiency virus.

A. As soon as practicable following arrest, the attorney for the Commonwealth may request, after consultation with any victim, that any person charged with any crime involving sexual assault pursuant

to this article or any offenses against children as prohibited by §§ 18.2-361, *18.2-361.1*, 18.2-366, 18.2-370, and 18.2-370.1 be requested to submit to testing for infection with human immunodeficiency virus. The person so charged shall be counseled about the meaning of the test, about acquired immunodeficiency syndrome, and about the transmission and prevention of infection with human immunodeficiency virus.

If the person so charged refuses to submit to the test or the competency of the person to consent to the test is at issue, the court with jurisdiction of the case shall hold a hearing to determine whether there is probable cause that the individual has committed the crime with which he is charged. If the court finds probable cause, the court shall order the accused to undergo testing for infection with human immunodeficiency virus. The court may enter such an order in the absence of the defendant if the defendant is represented at the hearing by counsel or a guardian ad litem. The court's finding shall be without prejudice to either the Commonwealth or the person charged and shall not be evidence in any proceeding, civil or criminal.

B. Upon conviction, or adjudication as delinquent in the case of a juvenile, of any crime involving sexual assault pursuant to this article or any offenses against children as prohibited by §§ 18.2-361,*18.2-361.1*, 18.2-366, 18.2-370, and 18.2-370.1, the attorney for the Commonwealth may, after consultation with any victim and, upon the request of any victim shall, request and the court shall order the defendant to submit to testing for infection with human immunodeficiency virus. Any test conducted following conviction shall be in addition to such tests as may have been conducted following arrest pursuant to subsection A.

C. Confirmatory tests shall be conducted before any test result shall be determined to be positive. The results of the tests for infection with human immunodeficiency virus shall be confidential as provided in § 32.1-36.1; however, the Department of Health shall also disclose the results to any victim and offer appropriate counseling as provided by subsection B of § 32.1-37.2. The Department shall conduct surveillance and investigation in accordance with § 32.1-39.

The results of such tests shall not be admissible as evidence in any criminal proceeding.

The cost of such tests shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

§ 18.2-63. Carnal knowledge of child between 13 and 15 years of age.

A. If any person carnally knows, without the use of force, a child ~~thirteen~~ *13* years of age or older but under ~~fifteen~~ *15* years of age, such person ~~shall be~~*is* guilty of a Class 4 felony.

B. However, if such child is ~~thirteen~~ *13* years of age or older but under ~~fifteen~~ *15* years of age and consents to sexual intercourse and the accused is a minor and such consenting child is three years or more the accused's junior, the accused ~~shall be~~*is* guilty of a Class 6 felony. If such consenting child is less than three years the accused's junior, the accused ~~shall be~~*is* guilty of a Class 4 misdemeanor.

In calculating whether such child is three years or more a junior of the accused minor, the actual dates of birth of the child and the accused, respectively, shall be used.

C. For the purposes of this section, (i) a child under the age of ~~thirteen~~ *13* years shall not be considered a consenting child and (ii) "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse, and animate and inanimate object sexual penetration.

§ 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.

A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the offenses specified in subsection B of this section and one of the offenses specified in subsection B of § 18.2-67.5:3 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury or judge before whom the person is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to felony convictions for:

1. Carnal knowledge of a child between ~~thirteen~~ *13* and ~~fifteen~~ *15* years of age in violation of § 18.2-63 when the offense is committed by a person over the age of ~~eighteen~~*18*;

2. Carnal knowledge of certain minors in violation of § 18.2-64.1;

3. Aggravated sexual battery in violation of § 18.2-67.3;

4. Crimes against nature in violation of subsection B of § 18.2-361, *or subsections C of § 18.2-361.1*;

5. Adultery or fornication with one's own child or grandchild in violation of § 18.2-366;

6. Taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or

7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to § 18.2-22.

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if

committed by an adult in the Commonwealth and the offense was committed less than ~~twenty~~ *20* years before the second offense.

The Commonwealth shall notify the defendant in writing, at least ~~thirty~~ *30* days prior to trial, of its intention to seek punishment pursuant to this section.

§ 18.2-67.8. Closed preliminary hearings.

In preliminary hearings for offenses charged under this article or under §§ 18.2-361, *18.2-361.1*, 18.2-366, 18.2-370 or § 18.2-370.1, the court may, on its own motion or at the request of the Commonwealth, the complaining witness, the accused, or their counsel, exclude from the courtroom all persons except officers of the court and persons whose presence, in the judgment of the court, would be supportive of the complaining witness or the accused and would not impair the conduct of a fair hearing.

§ 18.2-345. Lewd and lascivious behavior in a public place.

~~If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, each of them shall be~~*Any person who engages in lewd and lascivious behavior in a public place is* guilty of a Class 3 misdemeanor~~; and upon a repetition of the offense, and~~ *for a first* conviction ~~thereof, each of them shall be guilty~~ *and* of a Class 1 misdemeanor *for any subsequent conviction.*

§ 18.2-346. Being a prostitute or prostitution.

A. Any person who, for money or its equivalent, commits adultery, fornication, or any act ~~in violation of § 18.2-361~~ *of carnal knowledge as defined in subdivision C (ii) of § 18.2-63*, or offers to commit adultery, fornication, or any act ~~in violation of § 18.2-361~~ *of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63,* and thereafter does any substantial act in furtherance thereof, ~~shall be~~ *is* guilty of being a prostitute, or prostitution, ~~which shall be punishable as~~ a Class 1 misdemeanor.

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated above and thereafter does any substantial act in furtherance thereof ~~shall be~~ *is* guilty of solicitation of prostitution ~~and shall be guilty of~~, a Class 1 misdemeanor.

§ 18.2-346.1. Testing of convicted prostitutes for infection with human immunodeficiency virus.

As soon as practicable following conviction of any person for violation of § 18.2-346, ~~or~~ § 18.2-361, *or § 18.2-361.1*, such person shall be required to submit to testing for infection with human immunodeficiency virus. The convicted person shall receive counseling from personnel of the Department of Health concerning (i) the meaning of the test, (ii) acquired immunodeficiency syndrome and (iii) the transmission and prevention of infection with human immunodeficiency virus.

Tests shall be conducted to confirm any initial positive test results before any test result shall be determined to be positive for infection. The results of such test shall be confidential as provided in § 32.1-36.1 and shall be disclosed to the person who is the subject of the test and to the Department of Health as required by § 32.1-36. The Department shall conduct surveillance and investigation in accordance with the requirements of § 32.1-39.

The results of the test shall not be admissible in any criminal proceeding related to prostitution.

The cost of the test shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

§ 18.2-348. Aiding prostitution or illicit sexual intercourse.

It shall be unlawful for any person or any officer, employee or agent of any firm, association or corporation, with knowledge of, or good reason to believe, the immoral purpose of such visit, to take or transport or assist in taking or transporting, or offer to take or transport on foot or in any way, any person to a place, whether within or without any building or structure, used or to be used for the purpose of lewdness, assignation or prostitution within this Commonwealth; or procure or assist in procuring for the purpose of illicit sexual intercourse, or any act ~~violative of § 18.2-361~~ *of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63*, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution.

§ 18.2-356. Receiving money for procuring person.

Any person who shall receive any money or other valuable thing for or on account of procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse, or any act ~~in violation of § 18.2-361 shall be~~ *of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63, is* guilty of a Class 4 felony.

§ 18.2-359. Venue where any person transported for criminal sexual assault, attempted criminal sexual assault, or purposes of unlawful sexual intercourse, crimes against nature, and indecent liberties with children.

A. Any person transporting or attempting to transport through or across this Commonwealth, any person for the purposes of unlawful sexual intercourse or prostitution, or for the purpose of committing any crime specified in § 18.2-361, *§ 18.2-361.1* or § 18.2-370, may be presented, indicted, tried, and convicted in any county or city in which any part of such transportation occurred.

B. Venue for the trial of any person charged with committing or attempting to commit criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of this title may be had in the county or city in which such crime is alleged to have occurred or in any county or city through which the victim was transported by the defendant prior to the commission of such offense.

§ 18.2-360. Competency of persons to testify in prosecutions under §§ 18.2-355 through 18.2-361.1.

Any male or female referred to in §§ 18.2-355 through ~~18.2-361~~*18.2-361.1* shall be a competent witness in any prosecution under such sections to testify to any and all matters, including conversations by or with the accused with third persons in his or her presence, notwithstanding he or she may have married the accused either before or after the violation of any of the provisions of this section; but such witness shall not be compelled to testify after such marriage.

§ 18.2-361.1. Crimes against nature.

A. If any person carnally knows in any manner any brute animal, he or she is guilty of a Class 6 felony.

B. If any person carnally knows in a public place any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she is guilty of a Class 6 felony.

C. Any person who carnally knows by the anus or by or with the mouth or any act of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63, his daughter or granddaughter, son or grandson, brother or sister, or father or mother is guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least 13 but less than 18 years of age at the time of the offense, such parent or grandparent is guilty of a Class 3 felony.

§ 18.2-370. Taking indecent liberties with children; penalties.

A. Any person ~~eighteen~~ *18* years of age or over, who, with lascivious intent, ~~shall~~ knowingly and intentionally ~~commit~~ *commits* any of the following acts with any child under the age of ~~fourteen~~ *14* years ~~shall be~~ *is* guilty of a Class 5 felony:

(1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or

(2) [Repealed.]

(3) Propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse or any act ~~constituting an offense under § 18.2-361~~ *of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63*; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this section.

B. Any person ~~eighteen~~ *18* years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of ~~eighteen~~ *18* years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material; ~~shall be~~*is* guilty of a Class 5 felony.

C. Any person who is convicted of a second or subsequent violation of this section ~~shall be~~*is* guilty of a Class 4 felony; provided that (i) the offenses were not part of a common act, transaction or scheme, (ii) the accused was at liberty as defined in § 53.1-151 between each conviction, and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

§ 18.2-370.1. Taking indecent liberties with child by person in custodial or supervisory relationship; penalties.

A. Any person ~~eighteen~~ *18* years of age or older who maintains a custodial or supervisory relationship over a child under the age of ~~eighteen~~*18*, including but not limited to the parent, step-parent, grandparent, step-grandparent, or who stands in loco parentis with respect to such child and is not legally married to such child, and who, with lascivious intent, knowingly and intentionally (i) proposes that any such child feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or genital parts of the child, ~~or~~ (ii) proposes to such child the performance of an act of sexual intercourse or any act ~~constituting an offense under § 18.2-361, or~~ *of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63,* (iii) exposes his or her sexual or genital parts to such child, ~~or~~ (iv) proposes that any such child expose his or her sexual or genital parts to such person, ~~or~~ (v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or genital parts with another person, or (vi) sexually abuses the child as defined in § 18.2-67.10 ~~(6)~~, ~~shall be~~ *is* guilty of a Class 6 felony.

B. Any person who is convicted of a second or subsequent violation of this section ~~shall be~~ *is* guilty of a Class 5 felony; provided that (i) the offenses were not part of a common act, transaction or scheme, (ii) the accused was at liberty as defined in § 53.1-151 between each conviction, and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously

convicted of a violation of this section.

§ 18.2-370.2. Sex offenses prohibiting proximity to children.

A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, *§ 18.2-361.1*, or subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii) subsection A (iii) of § 18.2-61, §§ 18.2-63, 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1 of § 18.2-67.2, or subdivision A 1 or A 2 (a) of § 18.2-67.3, or §§ 18.2-370, 18.2-370.1, clause (ii) of § 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379.

B. Every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school. A violation of this section is punishable as a Class 6 felony.

§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty; abandoned infant.

Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228, or (ii) engages in consensual sexual intercourse*, or any act of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63,* with a child 15 or older not his spouse, child, or grandchild, ~~shall be~~ *is* guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, 18.2-66, and 18.2-347.

If the prosecution under this section is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the child's life.

§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.

A. It shall be unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or § 18.2-374.1. A violation of this section ~~shall be~~*is* punishable as a Class 6 felony.

B. It shall be unlawful for any person over the age of 18 to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child less than 18 years of age for (i) any activity in violation of §§ 18.2-355, 18.2-358, 18.2-361*, 18.2-361.1,* ~~or~~ § 18.2-370 *or 18.2-371*, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1. As used in this subsection, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications system. A violation of this section ~~shall be~~*is* punishable as a Class 5 felony.

§ 19.2-268.2. Recent complaint hearsay exception.

Notwithstanding any other provision of law, in any prosecution for criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a violation of §§ 18.2-361*, 18.2-361.1*, 18.2-366, 18.2-370 or § 18.2-370.1, the fact that the person injured made complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.

§ 19.2-271.2. Testimony of husband and wife in criminal cases.

In criminal cases husband and wife shall be allowed, and, subject to the rules of evidence governing other witnesses and subject to the exception stated in § 8.01-398, may be compelled to testify in behalf of each other, but neither shall be compelled to be called as a witness against the other, except (i) in the case of a prosecution for an offense committed by one against the other or against a minor child of either, (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361 *or § 18.2-361.1*) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371). The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by any attorney.

In the prosecution for a criminal offense as set forth in (i), (ii) or (iii) above, each shall be a competent witness except as to privileged communications.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall, or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty, or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-358, 18.2-361,*18.2-361.1*, 18.2-362, 18.2-366, 18.2-367, 18.2-368, 18.2-370, 18.2-370.1, or § 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of §§ 18.2-67.5, 18.2-67.5:2, or § 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

§ 32.1-58. Persons convicted of certain crimes to be examined, tested and treated.

Each person convicted of a violation of § 18.2-346, ~~or~~ § 18.2-361, *or § 18.2-361.1* shall be examined and tested for venereal disease and treated if necessary.

§ 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed nursing home shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2,

arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, *§ 18.2-361.1*, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state. However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed following the conviction.

Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense ~~shall be~~*is* guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

A nursing home shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the nursing home shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.

§ 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by a mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, *§ 18.2-361.1*, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.

However, a home care organization or hospice may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have

elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense ~~shall be~~*is* guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

C. A licensed home care organization or hospice shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such home care organization or hospice.

§ 37.1-20.3. Background check required.

A. As a condition of employment, the Department shall require any individual who (i) accepts a position of employment at a state facility as defined in § 37.1-1 and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant.

For purposes of clause (i) above, the Department shall not hire for compensated employment persons who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361 *or § 18.2-361.1*, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an individual is denied

employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

B. Those individuals listed in clause (i) of subsection A also shall provide the state facility or Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

C. The Board may promulgate regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department, at its option, decides to pay such cost.

§ 37.1-183.3. Background checks required.

A. Every provider licensed pursuant to this chapter shall, on and after July 1, 1999, require any applicant who accepts employment in any direct consumer care position to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsections B and D, no provider licensed pursuant to this chapter shall hire for compensated employment persons who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361 *or § 18.2-361.1*, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this chapter. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the authorized officer or director of a provider licensed pursuant to this chapter shall not be disseminated except as provided in this section.

B. Notwithstanding the provisions of subsection A, a provider may hire for compensated employment at adult substance abuse treatment facilities persons who were convicted of a misdemeanor violation relating to (i) unlawful hazing as set out in § 18.2-56; or (ii) reckless handling of a firearm as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects as set out in § 18.2-51.3; (b) threat as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor as set out in § 18.2-92; or (d) possession of

burglarious tools as set out in § 18.2-94; or any felony violation relating to the distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H 1 and H 2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a screening assessment, that such criminal behavior was substantially related to the applicant's use of substances, and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and substance use, abuse or addiction histories.

C. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection B to assess whether such persons have been successfully rehabilitated and are not a risk to consumers based on their criminal history backgrounds and substance use, abuse or addiction histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any such supplementary information as the provider or screening contractor may require or the applicant wishes to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision, together with a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of such screening shall be paid by the applicant, unless the licensed provider decides, at its option, to pay such cost.

D. Notwithstanding the provisions of subsection A, a provider may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment in a direct consumer care position.

E. Providers licensed pursuant to this chapter shall also require, as a condition of employment for all such applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515.

F. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this chapter, at its option, decides to pay such cost.

G. As used in this section, the term "direct consumer care position" means any position with a job description that includes responsibility for (i) treatment, case management, health, safety, development or well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.

H. As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse treatment position to another such position within the same licensee licensed pursuant to this chapter, or (ii) new employment in an adult substance abuse treatment position in another office or program licensed pursuant to this chapter if the person employed in a licensed program prior to July 1, 1999, has had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes, but is not limited to, (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same licensee licensed pursuant to this chapter, or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same licensee licensed pursuant to this chapter for which the person has previously worked in an adult substance abuse treatment position.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 37.1-197.2. Background checks required.

A. Every operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, and agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department shall require any applicant who accepts employment in any direct consumer care position with the operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding such applicant. Except as otherwise provided in subsections B or D, no operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, and agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides

services under contract with a community services board, behavioral health authority or local government department shall hire for compensated employment persons who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361 *or § 18.2-361.1*, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting (a) authorized officer or director of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department or (b) executive director or personnel director serving the operating community services board, administrative policy board, local government department with a policy-advisory board or the behavioral health authority. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to (a) the authorized officer or director of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department or (b) the executive director or personnel director serving any operating community services board, administrative policy board, local government department with a policy-advisory board or behavioral health authority shall not be disseminated except as provided in this section.

B. Notwithstanding the provisions of subsection A, the operating community services board, administrative policy board, local government department with a policy advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 that provides services under contract with a community services board, behavioral health authority or local government department may hire for compensated employment at adult substance abuse treatment facilities persons who were convicted of a misdemeanor violation relating to (i) unlawful hazing as set out in § 18.2-56; or (ii) reckless handling of a firearm as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects as set out in § 18.2-51.3; (b) threat as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor as set out in § 18.2-92; or (d) possession of burglarious tools as set out in § 18.2-94; or any felony violation relating to the distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H 1 or H 2 of § 18.2-248; or an equivalent offense in another state, if the prospective employer determines, based upon a screening assessment, that such criminal behavior was substantially related to the applicant's use of substances, and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and substance use, abuse or addiction histories.

C. The operating community services board, administrative policy board, local government

department with a policy advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 that provides services under contract with a community services board, behavioral health authority or local government department and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection B to assess whether such persons have been successfully rehabilitated and are not a risk to consumers based on their criminal history backgrounds and substance use, abuse or addiction histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any such supplementary information as the prospective employer or screening contractor may require or the applicant wishes to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision, together with a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of such screening shall be paid by the applicant, unless the board, authority, local department or licensed agency decides, at its option, to pay such cost.

D. Notwithstanding the provisions of subsection A, an operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment in a direct consumer care position.

E. Operating community services boards, administrative policy boards, local government departments with policy-advisory boards, behavioral health authorities and agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department shall also require, as a condition of employment for all such applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515.

F. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department, at its option, decides to pay such cost.

G. As used in this section, the term "direct consumer care position" means any position with a job description that includes responsibility for (i) treatment, case management, health, safety, development or well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.

H. As used in this section, "hire for compensated employment" does not include (i) a promotion from one substance abuse treatment position to another such position within the same licensee licensed pursuant to this chapter, or (ii) new employment in a substance abuse treatment position in another office or program licensed pursuant to this chapter if the person employed in a licensed program prior to July 1, 1999, has had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" does include, but is not limited to, (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same community services board, local government department, behavioral health authority, or licensed contract agency or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same community services board, local government department, behavioral health authority or licensed contract agency for which the person has previously worked in an adult substance abuse treatment position.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in

§ 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361 *or § 18.2-361.1*, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction and (ii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

§ 63.2-1726. Background check required; children's residential facilities..

A. As a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services; Education; Military Affairs; or Mental Health, Mental Retardation and Substance Abuse Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 1994, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 1994, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 1994; to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's fitness to have responsibility for the safety and well-being of children. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. Prior to permitting an applicant to begin his duties, the children's residential facility shall obtain the statement or affirmation from the applicant and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant meets the criteria to have responsibility for the safety and well-being of children based on whether or not the applicant has ever been convicted of or is the subject of pending charges for the following crimes: murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, extortion by threat as set out in § 18.2-59, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out § 18.2-361 *or § 18.2-361.1*, taking indecent liberties with

children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379, or an equivalent offense in another state. If the applicant is denied employment, or the opportunity to volunteer or provide services at a children's residential facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to provide services pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position or denying the applicant unsupervised access to clients pending a final determination of the applicant's fitness to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

B. Those individuals listed in clauses (i), (ii) and (iii) of subsection A shall also authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall submit the request for information to the central registry prior to permitting an applicant to begin his duties. The children's residential facility shall obtain a copy of the information from the central registry within ~~twenty-one~~*21* days of the applicant beginning his duties. The provisions of this subsection also shall apply to every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice.

C. The Boards of Social Services; Education; Juvenile Justice; and Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.

§ 63.2-1727. Sex offender or child abuser prohibited from operating or residing in family day home.

It shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in the home, has been convicted of a felony in violation of §§ 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355, 18.2-361, *18.2-361.1*, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1 or § 18.2-374.1, or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. A violation of this section ~~shall be~~*is* punishable as a Class 1 misdemeanor.

2. That § 18.2-344 of the Code of Virginia is repealed.

3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is _____for periods of imprisonment in state adult correctional facilities and is _____ for periods of commitment to the custody of the Department of Juvenile Justice.

House Bill 1055

CHAPTER 459

An Act to amend and reenact §§ 17.1-805, 18.2-124, 18.2-374.3, and 19.2-299 of the Code of Virginia and to repeal §§ 18.2-111.1, 18.2-114, 18.2-123, 18.2-161, 18.2-202, 18.2-203, 18.2-211, 18.2-351, 18.2-352, 18.2-353, 18.2-358, and 18.2-367 of the Code of Virginia, relating to the revision of Title 18.2; repeal of certain statutes.

[H 1055]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-805, 18.2-124, 18.2-374.3, and 19.2-299 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery, shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of ~~forty~~ *40* years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than ~~forty~~ *40* years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving or distributing, or possessing with the intent to manufacture, sell, give or distribute a Schedule I or II controlled substance shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2 or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years, and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories.

C. For purposes of this chapter, violent felony offenses shall include any violation of §§ 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or § 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or § 18.2-41; any Class 5 felony violation of § 18.2-47; any felony violation of §§ 18.2-48, 18.2-48.1 or § 18.2-49; any violation of §§ 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or § 18.2-55; any felony violation of § 18.2-57.2; any

violation of § 18.2-58 or § 18.2-58.1; any felony violation of § 18.2-60.1 or § 18.2-60.3; any violation of §§ 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or § 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92 or § 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any violation of subsection B of § 18.2-280; any violation of §§ 18.2-281, 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of subsection A of § 18.2-300; any felony violation of §§ 18.2-308.1 and 18.2-308.2; any violation of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or § 18.2-312; any violation of subdivision (2) or (3) of § 18.2-355; any violation of *former* § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of §§ 18.2-368, 18.2-370 or § 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or § 18.2-406; any violation of §§ 18.2-408, 18.2-413, 18.2-414 or § 18.2-433.2; any felony violation of §§ 18.2-460, 18.2-474.1 or § 18.2-477.1; any violation of §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485; any violation of § 53.1-203; or any conspiracy or attempt to commit any offense specified in this subsection, and any substantially similar offense under the laws of any state, the District of Columbia, the United States or its territories.

§ 18.2-124. Jurisdiction over offenses committed in Capitol Square.

The Circuit Court of the City of Richmond shall have jurisdiction to try cases of offenses committed in Capitol Square except as hereinafter provided. The ~~District Court~~ *district court* of the City of Richmond shall have jurisdiction to try *misdemeanor* cases ~~of misdemeanor~~ arising under §§ 18.2-122 ~~and 18.2-123~~, and all other offenses committed in the Capitol Square of which it would have jurisdiction if committed within the corporate limits and jurisdiction of the city; and the Capitol Police, or any member thereof, shall have the same authority to arrest and to swear out warrants for offenses committed on the Capitol Square as policemen of the City of Richmond have to arrest or to swear out warrants for offenses committed within the jurisdiction of the city.

§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.

A. It shall be unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or § 18.2-374.1. A violation of this ~~section shall be punishable as~~ *subsection is* a Class 6 felony.

B. It shall be unlawful for any person over the age of 18 to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child less than 18 years of age for (i) any activity in violation of §§ 18.2-355, ~~18.2-358,~~ 18.2-361 or § 18.2-370, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1. As used in this subsection, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications system. A violation of this ~~section shall be punishable as~~ *subsection is* a Class 5 felony.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall, or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty, or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, ~~18.2-358,~~ 18.2-361, 18.2-362, 18.2-366, ~~18.2-367,~~ 18.2-368, 18.2-370, 18.2-370.1, or § 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of §§ 18.2-67.5, 18.2-67.5:2, or § 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to

sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

2. That §§ 18.2-111.1, 18.2-114, 18.2-123, 18.2-161, 18.2-202, 18.2-203, 18.2-211, 18.2-351, 18.2-352, 18.2-353, 18.2-358, and 18.2-367 of the Code of Virginia are repealed.

House Bill 1058

VIRGINIA ACTS OF ASSEMBLY -- 2004 RECONVENED SESSION

CHAPTER 995

An Act to amend and reenact §§ 18.2-246.13, 18.2-246.14, 18.2-283.1, 18.2-287.4, 18.2-308, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7, 18.2-374.1:1, 19.2-386.1 through 19.2-386.5, and 59.1-148.4 of the Code of Virginia, to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 22.2, consisting of sections numbered 19.2-386.15 through 19.2-386.31, and to repeal §§ 18.2-46.9, 18.2-110, 18.2-152.16, 18.2-190.7, 18.2-246.4, 18.2-249, 18.2-253, 18.2-253.1, 18.2-253.2, 18.2-265.4, 18.2-310, 18.2-336, and 18.2-374.2 of the Code of Virginia, relating to transfer of forfeiture statutes to the criminal procedure code.

[H 1058]

Approved April 21, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-246.13, 18.2-246.14, 18.2-283.1, 18.2-287.4, 18.2-308, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7, 18.2-374.1:1, 19.2-386.1 through 19.2-386.5, and 59.1-148.4 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 22.2, consisting of sections numbered 19.2-386.15 through 19.2-386.31, as follows:

§ 18.2-246.13. Penalties.

A. Except as specifically provided in § 18.2-246.14, a first violation of any provision of this article shall be punishable by a civil penalty of no more than $1,000. A second or subsequent violation of any provision of this article shall be punishable by a civil penalty of no more than $10,000.

B. Any prospective consumer who knowingly submits a false certification under subdivision A 1 of § 18.2-246.8 shall be subject to a civil penalty of no more than $5,000 for each such offense.

C. Any person failing to collect or remit to the Board or the Department of Taxation any tax required in connection with a delivery sale shall be assessed, in addition to any other applicable penalty, a civil penalty of no more than five times the retail value of the cigarettes involved.

D. Any civil penalty collected under this article shall be paid to the general fund.

~~E. Any cigarettes sold or attempted to be sold in a delivery sale in violation of this article shall be forfeited to the Commonwealth and destroyed. All fixtures, equipment, materials and personal property used in substantial connection with a delivery sale or attempted delivery sale in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.~~

§ 18.2-246.14. Counterfeit cigarettes.

A. It shall be unlawful to sell or possess counterfeit cigarettes. ~~Such cigarettes shall be subject to seizure, forfeiture and destruction by the Board or any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials and personal property used in substantial connection with sale or possession of counterfeit cigarettes in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.~~

B. Any person who knowingly violates subsection A with a total quantity of less than two cartons of cigarettes shall be punished by a civil penalty of no more than $1,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of less than two cartons of cigarettes, be punished by a civil penalty of no more than $5,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

C. Any person who knowingly violates subsection A with a total quantity of two or more cartons of cigarettes shall be punished by a civil penalty of no more than $2,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of two or more cartons of cigarettes, be punished by a civil penalty of no more than $50,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

For purposes of this section, counterfeit cigarettes shall include but not be limited to cigarettes that (i) have false manufacturing labels, (ii) are not manufactured by the manufacturer indicated on the container, or (iii) have affixed to the container a false tax stamp.

§ 18.2-283.1. Carrying weapon into courthouse.

It shall be unlawful for any person to possess in or transport into any courthouse in this Commonwealth any (i) gun or other weapon designed or intended to propel a missile or projectile of any kind, (ii) frame, receiver, muffler, silencer, missile, projectile or ammunition designed for use with a dangerous weapon and (iii) any other dangerous weapon, including explosives, tasers, stun weapons and those weapons specified in subsection A of § 18.2-308. Any such weapon shall be subject to seizure by

a law-enforcement officer. A violation of this section is punishable as a Class 1 misdemeanor~~, and upon the person's conviction, the weapon seized shall be forfeited to the Commonwealth and disposed of as provided in subsection A of § 18.2-308~~.

The provisions of this section shall not apply to any police officer, sheriff, law-enforcement agent or official, game warden, conservator of the peace, magistrate, court officer, or judge while in the conduct of such person's official duties.

§ 18.2-287.4. Carrying loaded firearms in public areas prohibited; penalty.

It shall be unlawful for any person to carry a loaded firearm on or about his person on any public street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever nature that is open to the public (i) in any city with a population of 160,000 or more or (ii) in any county having an urban county executive form of government or any county or city surrounded thereby or adjacent thereto or in any county having a county manager form of government. The provisions of this section shall not apply to law-enforcement officers, licensed security guards, military personnel in the performance of their lawful duties, or any person having a valid permit to carry such firearm or to any person actually engaged in lawful hunting or lawful recreational shooting activities at an established shooting range or shooting contest. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

For purposes of this section, "firearm" means any (i) semi-automatic center-fire rifle or pistol that expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (ii) shotgun with a magazine which will hold more than seven rounds of the longest ammunition for which it is chambered.

~~Any firearm carried in violation of this section may be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.~~

The exemptions set forth in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section.

§ 18.2-308. Personal protection; carrying concealed weapons; when lawful to carry.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he shall be guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. ~~Any weapon used in the commission of a violation of this section shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the Division of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 18.2-310.~~ For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

Except as provided in subsection J 1, this section shall not apply to:

1. Any person while in his own place of business;

2. Any police officers, including Capitol Police officers, sergeants, sheriffs, deputy sheriffs or regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1;

3. Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;

4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;

5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;

6. Campus police officers appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

7. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions; and

8. Any State Police officer retired from the Department of State Police, any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth and any special agent retired from the State Corporation Commission or the Alcoholic Beverage Control Board (i) with a service-related disability or (ii) following at least ~~fifteen~~ *15* years of service with any such law-enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of subsection P, any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

C. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. [Repealed.]

4. Conservators of the peace, except that the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in subsection D hereof: (a) notaries public; (b) registrars; (c) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (d) commissioners in chancery;

5. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29;

6. Law-enforcement agents of the Armed Forces of the United States and federal agents who are otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;

7. Law-enforcement agents of the United States Naval Criminal Investigative Service; and

8. Harbormaster of the City of Hopewell.

D. Any person ~~twenty-one~~ *21* years of age or older may apply in writing to the clerk of the circuit court of the county or city in which he resides, or if he is a member of the United States Armed Forces, the county or city in which he is domiciled, for a five-year permit to carry a concealed handgun. Notwithstanding § 15.2-915, a county or city may enact an ordinance that requires any applicant for a concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state or national criminal history record. The application shall be made under oath before a notary or other person qualified to take oaths and shall be made only on a form prescribed by the Department of State Police, in consultation with the Supreme Court, requiring only that information necessary to determine eligibility for the permit. The court shall consult with either the sheriff or police department of the county or city and receive a report from the Central Criminal Records Exchange. As a condition for issuance of a concealed handgun permit, the applicant shall submit to fingerprinting if required by local ordinance in the county or city where the applicant resides and provide personal descriptive information to be forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant, and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies. Where feasible and practical, the local law-enforcement agency may transfer information electronically to the State Police instead of inked fingerprint cards. Upon completion of the criminal history records check, the State Police shall return the fingerprint cards to the submitting local agency or, in the case of scanned fingerprints, destroy the electronic record. The local agency shall then promptly notify the person that he has ~~twenty-one~~ *21* days from the date of the notice to request return of the fingerprint cards, if any. All fingerprint cards not claimed by the applicant within ~~twenty-one~~ *21* days of notification by the local agency shall be destroyed. All optically scanned fingerprints shall be destroyed upon completion of the criminal history records check without requiring that the applicant be notified. Fingerprints taken for the purposes described in this section shall not be copied, held or used for any other purposes. The court shall issue the permit within ~~forty-five~~ *45* days of receipt of the completed application unless it is determined that the applicant is disqualified. An application is deemed complete when all information required to be furnished by the applicant is delivered to and received by the clerk of court before or concomitant with the conduct of a state or national criminal history records check. If the applicant is later found by the court to be disqualified, the permit shall be revoked.

E. The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or § 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to former § 37.1-134.1 or § 37.1-134.16 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance or of public drunkenness within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the Armed Forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who it is alleged, in a sworn written statement submitted to the court by the sheriff, chief of police or attorney for the Commonwealth in the opinion of such sheriff, chief of police or attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police or the attorney for the Commonwealth shall be based upon personal knowledge or upon the sworn written statement of a competent person having personal knowledge.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § 18.2-280 or § 18.2-286.1 or brandishing of a firearm in violation of § 18.2-282 within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within ~~sixteen~~ *16* years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions."

17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.

18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.

19. An individual not otherwise ineligible pursuant to this section, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or of a criminal offense of illegal possession or distribution of marijuana or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this section, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or upon a charge of illegal possession or distribution of marijuana or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

F. The making of a materially false statement in an application under this section shall constitute perjury, punishable as provided in § 18.2-434.

G. The court may further require proof that the applicant has demonstrated competence with a handgun and the applicant may demonstrate such competence by one of the following, but no applicant shall be required to submit to any additional demonstration of competence:

1. Completing any hunter education or hunter safety course approved by the Department of Game

and Inland Fisheries or a similar agency of another state;

2. Completing any National Rifle Association firearms safety or training course;

3. Completing any firearms safety or training course or class available to the general public offered by a law-enforcement agency, junior college, college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or the Department of Criminal Justice Services;

4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition or current military service or proof of an honorable discharge from any branch of the armed services;

6. Obtaining or previously having held a license to carry a firearm in this Commonwealth or a locality thereof, unless such license has been revoked for cause;

7. Completing any firearms training or safety course or class conducted by a state-certified or National Rifle Association-certified firearms instructor;

8. Completing any governmental police agency firearms training course and qualifying to carry a firearm in the course of normal police duties; or

9. Completing any other firearms training which the court deems adequate.

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this subsection.

H. The permit to carry a concealed handgun shall specify only the following information: name, address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee; the signature of the judge issuing the permit, or of the clerk of court who has been authorized to sign such permits by the issuing judge; the date of issuance; and the expiration date. The person issued the permit shall have such permit on his person at all times during which he is carrying a concealed handgun and must display the permit and a photo-identification issued by a government agency of the Commonwealth or by the United States Department of Defense or United States State Department (passport) upon demand by a law-enforcement officer.

I. Persons who previously have held a concealed handgun permit shall be issued, upon application as provided in subsection D, a new five-year permit unless there is good cause shown for refusing to reissue a permit. If the circuit court denies the permit, the specific reasons for the denial shall be stated in the order of the court denying the permit. Upon denial of the application, the clerk shall provide the person with notice, in writing, of his right to an ore tenus hearing. Upon request of the applicant made within ~~twenty-one~~ *21* days, the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented by counsel, but counsel shall not be appointed, and the rules of evidence shall apply. The final order of the court shall include the court's findings of fact and conclusions of law.

J. Any person convicted of an offense that would disqualify that person from obtaining a permit under subsection E or who violates subsection F shall forfeit his permit for a concealed handgun and surrender it to the court. Upon receipt by the Central Criminal Records Exchange of a record of the arrest, conviction or occurrence of any other event which would disqualify a person from obtaining a concealed handgun permit under subsection E, the Central Criminal Records Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction or other event.

J1. Any person permitted to carry a concealed handgun, who is under the influence of alcohol or illegal drugs while carrying such handgun in a public place, shall be guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of § 18.2-36.1, maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. Upon such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

J2. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision E 14 or E 15, holding a permit for a concealed handgun, may have the permit suspended by the court before which such charge is pending or by the court which issued the permit.

J3. No person shall carry a concealed handgun onto the premises of any restaurant or club as defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia; however, nothing herein shall prohibit any sworn law-enforcement officer from carrying a concealed handgun on the premises of such restaurant or club or any owner or event sponsor or his employees from carrying a concealed handgun while on duty at such restaurant or club if such person has a

concealed handgun permit.

J4. Any individual for whom it would be unlawful to purchase, possess or transport a firearm under § 18.2-308.1:2 or § 18.2-308.1:3, who holds a concealed handgun permit, may have the permit suspended by the court which issued the permit during the period of incompetency, incapacity or disability.

K. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a law-enforcement officer with the Department of State Police or with a sheriff or police department, bureau or force of any political subdivision of the Commonwealth, after completing ~~fifteen~~ *15* years of service or after reaching age ~~fifty-five~~ *55*; (iii) as a law-enforcement officer with the United States Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, ~~Immigration and Naturalization Service~~ *United States Citizenship and Immigration Services*, Customs Service, Department of State Diplomatic Security Service or Naval Criminal Investigative Service, after completing ~~fifteen~~ *15* years of service or after reaching age ~~fifty-five~~ *55*; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia or any of the territories of the United States, after completing ~~fifteen~~ *15* years of service; or (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing ~~fifteen~~ *15* years of service. The clerk shall charge a fee of ~~ten dollars~~ *$10* for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed ~~thirty-five dollars~~ *$35* to cover the cost of conducting an investigation pursuant to this section. The ~~thirty-five-dollar~~ *$35* fee shall include any amount assessed by the Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the Federal Bureau of Investigation to the State Police with the fingerprints taken from the applicant. The State Police may charge a fee not to exceed ~~five dollars~~ *$5* to cover their costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed ~~fifty dollars~~ *$50*, with such fees to be paid in one sum to the person who accepts the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is accepted by the court as a complete application. The order issuing such permit shall be provided to the State Police and the law-enforcement agencies of the county or city. The State Police shall enter the permittee's name and description in the Virginia Criminal Information Network so that the permit's existence and current status will be made known to law-enforcement personnel accessing the Network for investigative purposes.

L. Any person denied a permit to carry a concealed handgun under the provisions of this section may present a petition for review to the Court of Appeals. The petition for review shall be filed within ~~sixty~~ *60* days of the expiration of the time for requesting an ore tenus hearing pursuant to subsection I, or if an ore tenus hearing is requested, within ~~sixty~~ *60* days of the entry of the final order of the circuit court following the hearing. The petition shall be accompanied by a copy of the original papers filed in the circuit court, including a copy of the order of the circuit court denying the permit. Subject to the provisions of *subsection B of* § 17.1-410 ~~B~~, the decision of the Court of Appeals or judge shall be final. Notwithstanding any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs incurred by the person shall be paid by the Commonwealth.

M. For purposes of this section:

"Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed, made and intended to fire a projectile by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

N. As used in this article:

"Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated mechanism.

"Spring stick" means a spring-loaded metal stick activated by pushing a button which rapidly and forcefully telescopes the weapon to several times its original length.

O. The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.

P. A valid concealed handgun permit or license issued by another state shall be valid in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible ~~twenty-four~~ *24* hours a day, (ii) the requirements and qualifications of that state's law are adequate to prevent possession of a permit by persons who would be denied a permit in the Commonwealth under this section. The Superintendent of State Police shall (a) in consultation with the Office of the Attorney General

determine whether states meet the requirements and qualifications of this section, (b) maintain a registry of such states on the Virginia Criminal Information Network (VCIN), and (c) make the registry available to law-enforcement officers for investigative purposes.

Q. A valid concealed handgun permit issued by the State of Maryland shall be valid in the Commonwealth provided, (i) the holder of the permit is licensed in the State of Maryland to perform duties substantially similar to those performed by Virginia branch pilots licensed pursuant to Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 and is performing such duties while in the Commonwealth, and (ii) the holder of the permit is 21 years of age or older.

R. The provisions of this statute or the application thereof to any person or circumstances which are held invalid shall not affect the validity of other provisions or applications of this statute which can be given effect without the invalid provisions or applications. This subsection is to reiterate § 1-17.1 and is not meant to add to or delete from that provision.

§ 18.2-308.1:2. Purchase, possession or transportation of firearm by persons adjudicated legally incompetent or mentally incapacitated; penalty.

~~A.~~ It shall be unlawful for any person who has been adjudicated (i) legally incompetent pursuant to former § 37.1-128.02 or former § 37.1-134, (ii) mentally incapacitated pursuant to former § 37.1-128.1 or former § 37.1-132 or (iii) incapacitated pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1 and whose competency or capacity has not been restored pursuant to former § 37.1-134.1 or § 37.1-134.16, to purchase, possess, or transport any firearm. A violation of this ~~subsection~~ *section* shall be punishable as a Class 1 misdemeanor.

~~B. Any firearm possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

§ 18.2-308.1:3. Purchase, possession or transportation of firearm by persons involuntarily committed; penalty.

A. It shall be unlawful for any person involuntarily committed pursuant to § 37.1-67.3 to purchase, possess or transport a firearm during the period of such person's commitment. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. ~~Any firearm possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

~~C.~~ Any person prohibited from purchasing, possessing or transporting firearms under this ~~subsection~~ *section* may, at any time following his release from commitment, petition the circuit court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. The court may, in its discretion and for good cause shown, grant the petition. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalty.

~~A.~~ It shall be unlawful for any person who is subject to (i) a protective order entered pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, or § 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection D of § 18.2-60.3; or (iv) an order issued by a tribunal of another state, the United States or any of its territories, possessions or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), or (iii) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this ~~subsection~~ *section* is a Class 1 misdemeanor.

~~B. Any firearm purchased or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

§ 18.2-308.2. Possession or transportation of firearms, stun weapons, tasers or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of 29 who was found guilty as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or stun weapon or taser as defined by § 18.2-308.1 or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon or taser as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of two

years. The minimum, mandatory terms of imprisonment prescribed for violations of this section shall not be suspended in whole or in part and shall be served consecutively with any other sentence. ~~Any firearm, stun weapon or taser as defined by § 18.2-308.1, or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm, stun weapon or taser under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm, stun weapon or taser; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection.

§ 18.2-308.2:01. Possession or transportation of certain firearms by aliens.

It shall be unlawful for any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence to knowingly and intentionally possess or transport any assault firearm or to knowingly and intentionally carry about his person, hidden from common observation, an assault firearm. A violation of this section shall be punishable as a Class 6 felony. ~~Any firearm possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

For purposes of this section, "assault firearm" means any semi-automatic center-fire rifle or pistol that expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.

Any person who sells, barters, gives or furnishes, or has in his possession or under his control with the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited from possessing or transporting a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.2 or § 18.2-308.7 shall be guilty of a Class 6 felony. However, this prohibition shall not be applicable when the person convicted of the felony, adjudicated delinquent or acquitted by reason of insanity has (i) been issued a permit pursuant to *subsection C of* § 18.2-308.2 ~~C~~ or *subsection B of* § 18.2-308.1:1 ~~B~~, (ii) been pardoned or had his political disabilities removed in accordance with *subsection B of* § 18.2-308.2 ~~B~~ or (iii) obtained a permit to ship, transport, possess or receive firearms pursuant to the laws of the United States. ~~Any firearm sold, bartered, given or furnished or possessed or controlled with intent to do so in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

§ 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.

B. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony and any person convicted hereunder is not eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of two years, which shall not be suspended in whole or in part. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana. A violation of this subsection is a Class 6 felony, and constitutes a separate and distinct felony and any person convicted hereunder is not eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the

primary felony.

~~D. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.~~

§ 18.2-308.5. Manufacture, import, sale, transfer or possession of plastic firearm prohibited.

It shall be unlawful for any person to manufacture, import, sell, transfer or possess any plastic firearm. As used in this section "plastic firearm" means any firearm, including machine guns and sawed-off shotguns as defined in this chapter, containing less than 3.7 ounces of electromagnetically detectable metal in the barrel, slide, cylinder, frame or receiver of which, when subjected to inspection by X-ray machines commonly used at airports, does not generate an image that accurately depicts its shape. A violation of this section shall be punishable as a Class 5 felony.

~~Any firearm manufactured, imported, sold, transferred or possessed in violation of this section shall be forfeited to the Commonwealth and disposed of in accordance with § 18.2-310.~~

§ 18.2-308.7. Possession or transportation of certain firearms by persons under the age of 18; penalty.

It shall be unlawful for any person under 18 years of age to knowingly and intentionally possess or transport a handgun or assault firearm anywhere in the Commonwealth. For the purposes of this section, "handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand and "assault firearm" means any (i) semi-automatic centerfire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (ii) shotgun with a magazine which will hold more than seven rounds of the longest ammunition for which it is chambered. A violation of this section shall be a Class 1 misdemeanor. ~~Any handgun possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

This section shall not apply to:

1. Any person (i) while in his home or on his property; (ii) while in the home or on the property of his parent, grandparent, or legal guardian; or (iii) while on the property of another who has provided prior permission, and with the prior permission of his parent or legal guardian if the person has the landowner's written permission on his person while on such property;

2. Any person who, while accompanied by an adult, is at, or going to and from, a lawful shooting range or firearms educational class, provided that the weapons are unloaded while being transported;

3. Any person actually engaged in lawful hunting or going to and from a hunting area or preserve, provided that the weapons are unloaded while being transported; and

4. Any person while carrying out his duties in the Armed Forces of the United States or the National Guard of this Commonwealth or any other state.

§ 18.2-374.1:1. Possession of child pornography; penalty.

A. Any person who knowingly possesses any sexually explicit visual material utilizing or having as a subject a person less than 18 years of age shall be guilty of a Class 6 felony. However, no prosecution for possession of material prohibited by this section shall lie where the prohibited material comes into the possession of the person charged from a law-enforcement officer or law-enforcement agency.

B. The provisions of this section shall not apply to any such material which is possessed for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial or other proper purpose by a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, attorney, judge, or other person having a proper interest in the material.

C. All sexually explicit visual material which utilizes or has as a subject a person less than 18 years of age shall be subject to lawful seizure and forfeiture pursuant to § ~~18.2-374.2~~ *19.2-386.31*.

D. Any person convicted of a second or subsequent offense under this section shall be guilty of a Class 5 felony.

§ 19.2-386.1. Commencing an action of forfeiture.

An action against any property subject to seizure under the provisions of § ~~18.2-46.9~~ *19.2-386.15* or § ~~18.2-249~~ *19.2-386.22* shall be commenced by the filing of an information in the clerk's office of the circuit court. Any information shall be filed in the name of the Commonwealth by the attorney for the Commonwealth or may be filed by the Attorney General if so requested by the attorney for the Commonwealth. Venue for an action of forfeiture shall lie in the county or city where (i) the property is located, (ii) the property is seized, or (iii) an owner of the property could be prosecuted for the illegal conduct alleged to give rise to the forfeiture. Such information shall (i) name as parties defendant all owners and lienholders then known or of record and the trustees named in any deed of trust securing such lienholder, (ii) specifically describe the property, (iii) set forth in general terms the grounds for forfeiture of the named property, (iv) pray that the same be condemned and sold or otherwise be disposed of according to law, and (v) ask that all persons concerned or interested be notified to appear and show cause why such property should not be forfeited. In all cases, an information shall be filed within three years of the date of actual discovery by the Commonwealth of the last act giving rise to the forfeiture or the action for forfeiture will be barred.

§ 19.2-386.2. Seizure of named property.

A. When any property subject to seizure under § ~~18.2-46.9~~ *19.2-386.15* or § ~~18.2-249~~ *19.2-386.22* has not been seized at the time an information naming that property is filed, the clerk of the circuit court, upon motion of the attorney for the Commonwealth wherein the information is filed, shall issue a warrant to the sheriff or other state or local law-enforcement officer authorized to serve criminal process in the jurisdiction where the property is located, describing the property named in the complaint and authorizing its immediate seizure.

B. In all cases of seizure of real property, a notice of lis pendens shall be filed with the clerk of the circuit court of the county or city wherein the property is located and shall be indexed in the land records in the name or names of those persons whose interests appear to be affected thereby.

§ 19.2-386.3. Notice of seizure for forfeiture and notice of motion for judgment.

A. If an information has not been filed, then upon seizure of any property under § ~~18.2-46.9~~ *19.2-386.15* or § ~~18.2-249~~ *19.2-386.22*, the agency seizing the property shall forthwith notify in writing the attorney for the Commonwealth in the county or city in which the seizure occurred, who shall, within ~~twenty-one~~ *21* days of receipt of such notice, file a notice of seizure for forfeiture with the clerk of the circuit court. Such notice of seizure for forfeiture shall specifically describe the property seized, set forth in general terms the grounds for seizure, identify the date on which the seizure occurred, and identify all owners and lien holders then known or of record. The clerk shall forthwith mail by first-class mail notice of seizure for forfeiture to the last known address of all identified owners and lien holders. When property has been seized under § ~~18.2-46.9~~ *19.2-386.15* or § ~~18.2-249~~ *19.2-386.22* prior to filing an information, then an information against that property shall be filed within ~~ninety~~ *90* days of the date of seizure or the property shall be released to the owner or lien holder.

B. Except as to corporations, all parties defendant shall be served, in accordance with § 8.01-296, with a copy of the information and a notice to appear prior to any motion for default judgment on the information. The notice shall contain a statement warning the party defendant that his interest in the property shall be subject to forfeiture to the Commonwealth unless within ~~thirty~~ *30* days after service on him of the notice, or before the date set forth in the order of publication with respect to the notice, an answer under oath is filed in the proceeding setting forth (i) the nature of the defendant's claim, (ii) the exact right, title or character of the ownership or interest in the property and the evidence thereof, and (iii) the reason, cause, exemption or defense he may have against the forfeiture of his interest in the property, including but not limited to the exemptions set forth in § 19.2-386.8. Service upon corporations shall be made in accordance with § 8.01-299 or subdivision 1 or 2 of § 8.01-301; however, if such service cannot be thus made, it shall be made by publication in accordance with § 8.01-317.

§ 19.2-386.4. Records and handling of seized property.

Any agency seizing property under §§ ~~18.2-46.9~~ *19.2-386.2*, ~~18.2-249~~ *19.2-386.15* or § ~~19.2-386.2~~ *19.2-386.22*, pending forfeiture and final disposition, may do any of the following:

1. Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture in any appropriate public record relating to property;

2. Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest-bearing account;

3. Remove the property to a place designated by the circuit court in the county or city wherein the property was seized; or

4. Provide for another custodian or agency to take custody of the property and remove it to an appropriate location within or without the jurisdiction of the circuit court in the county or city wherein the property was seized or in which the complaint was filed.

A report regarding the type of property subject to forfeiture and its handling pursuant to this section and § 19.2-386.5, and the final disposition of the property shall be filed by the seizing agency with the Department of Criminal Justice Services in accordance with regulations promulgated by the Board.

§ 19.2-386.5. Release of seized property.

At any time prior to the filing of an information, the attorney for the Commonwealth in the county or city in which the property has been seized pursuant to § ~~18.2-46.9~~ *19.2-386.15* or § ~~18.2-249~~ *19.2-386.22* may, in his discretion, upon the payment of costs incident to the custody of the seized property, return the seized property to an owner or lien holder, without requiring that the owner or lien holder post bond as provided in § 19.2-386.6, if he believes the property is properly exempt from forfeiture pursuant to § 19.2-386.8.

CHAPTER 22.2.

MISCELLANEOUS FORFEITURE PROVISIONS.

§ 19.2-386.15. Seizure of property used in connection with or derived from terrorism.

A. The following property shall be subject to lawful seizure by any law-enforcement officer charged with enforcing the provisions of Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2: all moneys or other property, real or personal, together with any interest or profits derived from the investment of such money and used in substantial connection with an act of terrorism as defined in § 18.2-46.4.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title.

§ 19.2-386.16. Forfeiture of motor vehicles used in commission of certain crimes.

Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a second or subsequent offense of §§ 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356 or § 18.2-357 or of a similar ordinance of any county, city or town or knowingly used for the transportation of any stolen goods, chattels or other property, when the value of such stolen goods, chattels or other property is $200 or more, or any stolen property obtained as a result of a robbery, without regard to the value of the property, shall be forfeited to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a receipt therefor.

Forfeiture of such vehicle shall be enforced as is provided in §§ 4.1-339 through 4.1-348 as to vehicles used for the transportation of illegally acquired alcoholic beverages, and the provisions of §§ 4.1-339 through 4.1-348 shall apply, mutatis mutandis, to proceedings for the enforcement of such forfeiture except that venue for the forfeiture proceeding shall be in the county or city in which the offense occurred.

The agency seizing the motor vehicle or other conveyance shall, for such period of time as the court prescribes, be permitted the use and operation of the motor vehicle or other conveyance, after court forfeiture, for the investigation of crimes against the Commonwealth by the agency seizing the motor vehicle or other conveyance. The agency using or operating each motor vehicle shall have insurance on each vehicle used or operated for liability and property damage.

§ 19.2-386.17. Forfeitures for computer crimes.

All moneys and other income, including all proceeds earned but not yet received by a defendant from a third party as a result of the defendant's violations of Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2, and all computer equipment, all computer software, and all personal property used in connection with any violation of such article known by the owner thereof to have been used in violation of such article, shall be subject to lawful seizure by a law-enforcement officer and forfeiture by the Commonwealth in accordance with the procedures set forth in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, applied mutatis mutandis.

§ 19.2-386.18. Forfeiture of unlawful electronic communication devices.

Any unlawful electronic communication device possessed, manufactured or sold in violation of §§ 18.2-190.2, 18.2-190.3 or § 18.2-190.4 may be seized and forfeited to the Commonwealth, and turned over to the circuit court in the city or county in which it was seized and such property shall be disposed of as provided by law.

§ 19.2-386.19. Seizure of property used in connection with money laundering.

The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2: (i) all money, equipment, motor vehicles, and all other personal and real property of any kind or character used in substantial connection with the laundering of proceeds of some form of activity punishable as a felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States, and (ii) all money or other property, real or personal, traceable to the proceeds of some form of activity punishable as a felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States, together with any interest or profits derived from the investment of such proceeds or other property. Real property shall not be subject to seizure unless the minimum prescribed punishment for the violation is a term of imprisonment of not less than five years. All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2.

§ 19.2-386.20. Forfeiture of cigarettes sold or attempted to be sold in an unlawful delivery sale.

Any cigarettes sold or attempted to be sold in a delivery sale in violation of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 shall be forfeited to the Commonwealth and destroyed. All fixtures, equipment, materials and personal property used in substantial connection with a delivery sale or attempted delivery sale in a knowing and intentional violation of such article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, applied mutatis mutandis.

§ 19.2-386.21. Forfeiture of counterfeit cigarettes.

Counterfeit cigarettes possessed in violation of § 18.2-246.14 shall be subject to seizure, forfeiture and destruction by the Virginia Alcoholic Beverage Control Board or any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials and personal property used in substantial connection with sale or possession of counterfeit cigarettes in a knowing and intentional violation of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, applied mutatis mutandis.

§ 19.2-386.22. Seizure of property used in connection with or derived from illegal drug transactions.

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2: (i) all money, medical equipment,

office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or distribution of controlled substances or possession with intent to sell or distribute controlled substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute marijuana in violation of subdivisions (a) (2), (a) (3) and (c) of § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248 or for marijuana in violation of § 18.2-248.1 or for a controlled substance or marijuana in violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange, together with any interest or profits derived from the investment of such money or other property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title.

§ 19.2-386.23. Disposal of seized controlled substances, marijuana and paraphernalia.

A. All controlled substances, imitation controlled substances, marijuana or paraphernalia, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, shall be forfeited and disposed of as follows:

1. Upon written application by the Division of Forensic Science the court may order the forfeiture of any such substance or paraphernalia to the Division for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1 of this subsection, the court shall order the destruction of all such substances or paraphernalia, which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of § 18.2-265.1 not be destroyed and that it be given to a person or entity that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and publicly beneficial use. A return under oath, reporting the time, place and manner of destruction shall be made to the court and to the Board of Pharmacy by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is given or otherwise comes into possession of any such substances or paraphernalia that are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that, a statement under oath, reporting a description of the substances and paraphernalia destroyed, and the time, place and manner of destruction is made to the chief law-enforcement officer and to the Board of Pharmacy by the officer to whom the order is directed.

B. No such substance or paraphernalia used or to be used in a criminal prosecution under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § 19.2-386.24.

§ 19.2-386.24. Destruction of seized controlled substances or marijuana prior to trial.

Where seizures of controlled substances or marijuana are made in excess of 10 pounds in connection with any prosecution or investigation under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, the appropriate law-enforcement agency may retain 10 pounds of the substance randomly selected from the seized substance for representative purposes as evidence and destroy the remainder of the seized substance.

Before any destruction is carried out under this section, the law-enforcement agency shall cause the material seized to be photographed with identification case numbers or other means of identification and shall prepare a report identifying the seized material. It shall also notify the accused, or other interested party, if known, or his attorney, at least five days in advance that the photography will take place and that they may be present. Prior to any destruction under this section, the law-enforcement agency shall also notify the accused or other interested party, if known, and his attorney at least seven days prior to the destruction of the time and place the destruction will occur. Any notice required under the provisions of this section shall be by first-class mail to the last known address of the person required to be notified. In addition to the substance retained for representative purposes as evidence, all photographs and records made under this section and properly identified shall be admissible in any court proceeding for any purposes for which the seized substance itself would have been admissible.

§ 19.2-386.25. Judge may order law-enforcement agency to maintain custody of controlled substances.

Upon request of the clerk of any court, a judge of the court may order a law-enforcement agency to take into its custody or to maintain custody of substantial quantities of any controlled substances,

imitation controlled substances, chemicals, marijuana or paraphernalia used or to be used in a criminal prosecution under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2. The court in its order may make provision for ensuring integrity of these items until further order of the court.

§ 19.2-386.26. Seizure and forfeiture of drug paraphernalia.

All drug paraphernalia as defined in Article 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 shall be forfeited to the Commonwealth and may be seized and disposed of in the same manner as provided in § 19.2-386.23, subject to the rights of an innocent lienor, to be recognized as under § 4.1-343.

§ 19.2-386.27. Forfeiture of firearms carried in violation of § 18.2-308.

Any weapon used in the commission of a violation of § 18.2-308 shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the Division of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 19.2-386.29.

§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in violation of law.

Any firearm, stun weapon or taser as defined by § 18.2-308.1, or any weapon concealed, possessed, transported or carried in violation of §§ 18.2-283.1, 18.2-287.4, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7, or § 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

§ 19.2-386.29. Forfeiture of certain weapons used in commission of criminal offense.

All pistols, shotguns, rifles, dirks, bowie knives, switchblade knives, ballistic knives, razors, slingshots, brass or metal knucks, blackjacks, stun weapons and tasers, and other weapons used by any person in the commission of a criminal offense, shall, upon conviction of such person, be forfeited to the Commonwealth by order of the court trying the case. The court shall dispose of such weapons as it deems proper by entry of an order of record. Such disposition may include the destruction of the weapons or, subject to any registration requirements of federal law, sale of the firearms to a licensed dealer in such firearms in accordance with the provisions of Chapter 22 (§ 19.2-369 et seq.) of this title regarding sale of property forfeited to the Commonwealth.

The proceeds of any sale of such weapon shall be paid in accordance with the provisions of Article VIII, Section 8 of the Constitution of Virginia. In addition, the court may authorize the seizing law-enforcement agency to use the weapon for a period of time as specified in the order. When the seizing agency ceases to so use the weapon, it shall be disposed of as otherwise provided in this section.

However, upon petition to the court and notice to the attorney for the Commonwealth, the court, upon good cause shown, shall return any such weapon to its lawful owner after conclusion of all relevant proceedings if such owner (i) did not know and had no reason to know of the conduct giving rise to the forfeiture and (ii) is not otherwise prohibited by law from possessing the weapon. The owner shall acknowledge in a sworn affidavit to be filed with the record in the case or cases that he has retaken possession of the weapon involved.

§ 19.2-386.30. Forfeiture of money, gambling devices, etc., seized from illegal gambling enterprise; innocent owners or lienors.

All money, gambling devices, office equipment and other personal property used in connection with an illegal gambling enterprise or activity, and all money, stakes and things of value received or proposed to be received by a winner in any illegal gambling transaction, which are lawfully seized by any law-enforcement officer or which shall lawfully come into his custody, shall be forfeited to the Commonwealth by order of the court in which a conviction under Article 1 (§ 18.2-325 et seq.) of Chapter 8 of Title 18.2 is obtained. Such court shall order all money so forfeited to be paid over to the Commonwealth, and by order shall make such disposition of other property so forfeited as the court deems proper, including award of such property to any state agency or charitable organization for lawful purposes, or in case of the sale thereof, the proceeds therefrom to be paid over to the Commonwealth. Provided, however, that such forfeiture shall not extinguish the rights of any person without knowledge of the illegal use of such property who is the lawful owner or who has a lien on the same, which has been perfected in the manner provided by law.

§ 19.2-386.31. Seizure and forfeiture of property used in connection with production of sexually explicit items involving children.

All audio and visual equipment, electronic equipment, devices and other personal property used in connection with the production, distribution, publication, sale, possession with intent to distribute or making of sexually explicit visual material having a person less than 18 years of age as a subject shall be subject to lawful seizure by a law-enforcement officer and shall be subject to forfeiture to the Commonwealth pursuant to Chapter 22 (§ 19.2-369 et seq.) of this title by order of the court in which a conviction under § 18.2-374.1 is obtained. Notwithstanding the provisions of § 19.2-381, the court shall dispose of the forfeited property as it deems proper, including awarding the property to a state agency for lawful purposes. If the property is disposed of by sale, the court shall provide that the proceeds be paid into the Literary Fund.

A forfeiture under this section shall not extinguish the rights of any person without knowledge of the

illegal use of the property who (i) is the lawful owner or (ii) has a valid and perfected lien on the property.

§ 59.1-148.4. Sale of firearms by law-enforcement agencies prohibited; exception.

A law-enforcement agency of this Commonwealth shall not sell or trade any firearm owned and used or otherwise lawfully in its possession except (i) to another law-enforcement agency of the Commonwealth, (ii) to a licensed firearms dealer, (iii) to the persons as provided in § 59.1-148.3 or (iv) as authorized by a court in accordance with § ~~18.2-310~~ *19.2-386.29*.

2. That §§ 18.2-46.9, 18.2-110, 18.2-152.16, 18.2-190.7, 18.2-246.4, 18.2-249, 18.2-253, 18.2-253.1, 18.2-253.2, 18.2-265.4, 18.2-310, 18.2-336, and 18.2-374.2 of the Code of Virginia are repealed.

House Bill 1059

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 461

An Act to amend and reenact §§ 4.1-305, 18.2-36.1, 18.2-51.1, 18.2-53.1, 18.2-57, 18.2-121, 18.2-154, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, 18.2-308.4, 19.2-120, 30-19.1:4, 46.2-301, 46.2-341.28, 46.2-357, 46.2-391, 53.1-116, and 53.1-203 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-12.1, relating to definition of mandatory minimum punishment.

[H 1059]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-305, 18.2-36.1, 18.2-51.1, 18.2-53.1, 18.2-57, 18.2-121, 18.2-154, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, 18.2-308.4, 19.2-120, 30-19.1:4, 46.2-301, 46.2-341.28, 46.2-357, 46.2-391, 53.1-116, and 53.1-203 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-12.1 as follows:

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall purchase or possess, or attempt to purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to purchase or attempt to purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a *mandatory minimum* fine of ~~at least~~ $500 or ordered to perform a *mandatory* minimum of 50 hours of community service as a condition of probation supervision and (ii) such person's license to operate a motor vehicle in the Commonwealth may be suspended for a period of not more than one year. The court, in its discretion and upon a demonstration of hardship, may authorize any person convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or subsection E of § 18.2-271.1 or when referred to a local community-based probation program established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require a person issued a restricted permit under the provisions of this subsection to be monitored by an alcohol safety action program. The alcohol safety action program shall report to the court any violation of the terms of the restricted permit, any condition related thereto or any failure to remain alcohol-free during the suspension period. ~~However, the sentence imposed pursuant to clause (i) of this subsection shall not be suspended.~~

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any person who has not previously been convicted of ~~under-aged~~ *underaged* possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused. This program may be located in the judicial district in which the charge is brought or in

any judicial district ordered by the court. The services shall be provided by (i) a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, (ii) certified by the Commission on VASAP, or (iii) by a program made available through a community-based probation program established pursuant to § 9.1-174. When an offender is ordered to enter a local community-based probation program rather than the alcohol safety action program, the local community-based probation program shall be responsible for providing for services or referring the offender to education or treatment services as a condition of probation.

Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be treated as a conviction for the purpose of applying this section in any subsequent proceedings.

§ 18.2-12.1. Mandatory minimum punishment; definition.

"Mandatory minimum" wherever it appears in this Code means, for purposes of imposing punishment upon a person convicted of a crime, that the court shall impose the entire term of confinement, the full amount of the fine and the complete requirement of community service prescribed by law. The court shall not suspend in full or in part any punishment described as mandatory minimum punishment.

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

A. Any person who, as a result of driving under the influence in violation of clause (ii), (iii), or (iv) of § 18.2-266 or any local ordinance substantially similar thereto unintentionally causes the death of another person, shall be guilty of involuntary manslaughter.

B. If, in addition, the conduct of the defendant was so gross, wanton and culpable as to show a reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of not less than one nor more than ~~twenty~~ *20* years, one year of which shall be a mandatory~~,~~ minimum term of imprisonment.

C. The provisions of this section shall not preclude prosecution under any other homicide statute. This section shall not preclude any other revocation or suspension required by law. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

§ 18.2-51.1. Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical service providers; penalty; lesser-included offense.

If any person maliciously causes bodily injury to another by any means including the means set out in § 18.2-52, with intent to maim, disfigure, disable or kill, and knowing or having reason to know that such other person is a law-enforcement officer, as defined hereinafter, firefighter, as defined in § 65.2-102, search and rescue personnel as defined hereinafter, or emergency medical services personnel, as defined in § 32.1-111.1 engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, such person shall be guilty of a felony punishable by imprisonment for a period of not less than five years nor more than ~~thirty~~ *30* years and, subject to subdivision (g) of § 18.2-10, a fine of not more than $100,000. Upon conviction, the sentence of such person shall include a mandatory~~,~~ minimum term of imprisonment of two years.

If any person unlawfully, but not maliciously, with the intent aforesaid, causes bodily injury to another by any means, knowing or having reason to know such other person is a law-enforcement officer, firefighter, as defined in § 65.2-102, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, he shall be guilty of a Class 6 felony, and upon conviction, the sentence of such person shall include a mandatory~~,~~ minimum term of imprisonment of one year.

Nothing in this section shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

~~As used in this section the term "mandatory, minimum" means that the sentence it describes shall be served with no suspension of sentence in whole or in part.~~

As used in this section "law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office ~~which~~ *that* is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; and auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

As used in this section, "search and rescue personnel" means any employee or member of a search and rescue organization that is authorized by a resolution or ordinance duly adopted by the governing body of any county, city or town of the Commonwealth.

The provisions of § 18.2-51 shall be deemed to provide a lesser-included offense hereof.

§ 18.2-53.1. Use or display of firearm in committing felony.

It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm

or display such weapon in a threatening manner while committing or attempting to commit murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2, robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in § 18.2-51.2, malicious wounding by mob as defined in § 18.2-41 or abduction. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a *mandatory minimum* term of imprisonment of three years for a first conviction, and ~~for~~ *to* a *mandatory minimum* term of five years for a second or subsequent conviction under the provisions of this section. ~~Notwithstanding any other provision of law, the sentence prescribed for a violation of the provisions of this section shall not be suspended in whole or in part, nor shall anyone convicted hereunder be placed on probation.~~ Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

§ 18.2-57. Assault and battery.

A. Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a ~~mandatory, minimum~~ term of confinement of at least six months, ~~thirty~~ *30* days of which shall ~~not be suspended, in whole or in part~~ *be a mandatory minimum term of confinement.*

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a ~~mandatory, minimum~~ term of confinement of at least six months, ~~thirty~~ *30* days of which shall ~~not be suspended, in whole or in part~~ *be a mandatory minimum term of confinement.*

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a law-enforcement officer as defined hereinafter, a correctional officer as defined in § 53.1-1, a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department or a firefighter as defined in § 65.2-102, engaged in the performance of his public duties as such, such person shall be guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory~~,~~ minimum term of confinement ~~for~~ *of* six months ~~which mandatory, minimum term shall not be suspended, in whole or in part~~.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a ~~mandatory, minimum~~ sentence of ~~fifteen~~ *15* days in jail, two days of which shall ~~not be suspended in whole or in part~~ *be a mandatory minimum term of confinement.* However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory~~,~~ minimum sentence of confinement of six months ~~which shall not be suspended in whole or in part~~.

E. As used in this section:

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth, and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, and game wardens appointed pursuant to § 29.1-200, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

"School security officer" means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

F. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any teacher, principal, assistant principal, guidance counselor, or school security officer, in the course and scope of his acting official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting

physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a teacher, principal, assistant principal, guidance counselor, or school security officer at the time of the event.

§ 18.2-121. Entering property of another for purpose of damaging it, etc.

It shall be unlawful for any person to enter the land, dwelling, outhouse or any other building of another for the purpose of damaging such property or any of the contents thereof or in any manner to interfere with the rights of the owner, user or the occupant thereof to use such property free from interference.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor. However, if a person intentionally selects the property entered because of the race, religious conviction, color or national origin of the owner, user or occupant of the property, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a ~~mandatory, minimum~~ term of confinement of at least six months, ~~thirty~~ *30* days of which shall ~~not be suspended, in whole or in part~~ *be a mandatory minimum term of confinement.*

§ 18.2-154. Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty.

Any person who maliciously shoots at, or maliciously throws any missile at or against, any train or cars on any railroad or other transportation company or any vessel or other watercraft, or any motor vehicle or other vehicles when occupied by one or more persons, whereby the life of any person on such train, car, vessel, or other watercraft, or in such motor vehicle or other vehicle, may be put in peril, shall be guilty of a Class 4 felony. In the event of the death of any such person, resulting from such malicious shooting or throwing, the person so offending shall be deemed guilty of murder, the degree to be determined by the jury or the court trying the case without a jury.

If any such act is committed unlawfully, but not maliciously, the person so offending shall be guilty of a Class 6 felony and, in the event of the death of any such person, resulting from such unlawful act, the person so offending shall be deemed guilty of involuntary manslaughter.

If any person commits a violation of this section by maliciously or unlawfully shooting, with a firearm, at a conspicuously marked law-enforcement, fire or rescue squad vehicle, ambulance or any other emergency medical vehicle, the sentence imposed shall include a mandatory, minimum term of imprisonment of one year ~~which shall not be suspended in whole or in part~~.

§ 18.2-248. Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance prohibited; penalties.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.

B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. Any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than ~~forty~~ *40* years and fined not more than $500,000. Upon a second or subsequent conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years and be fined not more than $500,000.

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than five years, three years of which shall be a mandatory, minimum term of imprisonment ~~not to be suspended in whole or in part and~~ to be served consecutively with any other sentence and *he* shall be fined not more than $500,000.

D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of

the controlled substance to use or become addicted to or dependent upon such controlled substance, he shall be guilty of a Class 5 felony.

E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharmacist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

F. Any person who violates this section with respect to a controlled substance classified in Schedule III, IV or V or an imitation controlled substance which imitates a controlled substance classified in Schedule III, IV or V, except for an anabolic steroid classified in Schedule III constituting a violation of § 18.2-248.5, shall be guilty of a Class 1 misdemeanor.

G. Any person who violates this section with respect to an imitation controlled substance which imitates a controlled substance classified in Schedule I or II shall be guilty of a Class 6 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this subsection that the defendant believed the imitation controlled substance to actually be a controlled substance.

H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give or distribute the following:

1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;

2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine base;

4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than ~~one~~ *$1* million ~~dollars~~ and imprisonment for ~~twenty~~ *20* years to life, ~~twenty~~ *20* years of which shall be a mandatory~~,~~ minimum sentence ~~which shall be served with no suspension in whole or in part~~. Such mandatory~~,~~ minimum sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an offense listed in subsection C of § 17.1-805, (ii) the person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so, (iii) the offense did not result in death or serious bodily injury to any person, (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section, and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

H1. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at least $100,000 but less than $250,000 in gross receipts during any ~~twelve~~ *12*-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any ~~twelve~~ *12*-month period of its existence:

1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances

referred to in subdivisions a through c;

3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;

4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A conviction under this section shall be punishable by a fine of not more than ~~one~~ *$1* million ~~dollars~~ and imprisonment for ~~twenty~~ *20* years to life, ~~twenty~~ *20* years of which shall be a mandatory~~,~~ minimum sentence ~~which shall be served with no suspension in whole or in part~~.

H2. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise if (i) the enterprise received $250,000 or more in gross receipts during any ~~twelve~~ *12*-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any ~~twelve~~ *12*-month period of its existence:

1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

2. At least 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;

4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than ~~one~~ *$1* million ~~dollars~~ and imprisonment for life, which shall be served with no suspension in whole or in part. Such punishment shall be made to run consecutively with any other sentence. However, the court may impose a mandatory~~,~~ minimum sentence of ~~forty~~ *40* years if the court finds that the defendant substantially cooperated with law-enforcement authorities.

I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he violates any provision of this section, the punishment for which is a felony and (ii) such violation is a part of a continuing series of violations of this section which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and from which such person obtains substantial income or resources.

§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) it is unlawful for any person to transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance or five or more pounds of marijuana. A violation of this section shall constitute a separate and distinct felony. Upon conviction, the person shall be sentenced to not less than five years nor more than ~~forty~~ *40* years imprisonment, three years of which shall be a ~~minimum,~~ mandatory *minimum* term of imprisonment, and a fine not to exceed $1,000,000. A second or subsequent conviction hereunder shall be punishable by a ~~minimum,~~ mandatory *minimum* term of imprisonment of ~~ten~~ *10* years, which ~~shall not be suspended in whole or in part and~~ shall be served consecutively with any other sentence.

§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.

Except as authorized in the Drug Control Act, Chapter 34 of Title 54.1, it shall be unlawful for any person to sell, give, distribute or possess with intent to sell, give or distribute marijuana.

(a) Any person who violates this section with respect to:

(1) Not more than one-half ounce of marijuana is guilty of a Class 1 misdemeanor;

(2) More than one-half ounce but not more than five pounds of marijuana is guilty of a Class 5 felony;

(3) More than five pounds of marijuana is guilty of a felony punishable by imprisonment of not less than five nor more than ~~thirty~~ *30* years.

If such person proves that he gave, distributed or possessed with intent to give or distribute

marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or dependent upon such marijuana, he shall be guilty of a Class 1 misdemeanor.

(b) Any person who gives, distributes or possesses marijuana as an accommodation and not with intent to profit thereby, to an inmate of a state or local correctional facility as defined in § 53.1-1, or in the custody of an employee thereof shall be guilty of a Class 4 felony.

(c) Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, not for his own use is guilty of a felony punishable by imprisonment of not less than five nor more than ~~thirty~~ *30* years and a fine not to exceed $10,000.

(d) When a person is convicted of a third or subsequent felony offense under this section and it is alleged in the warrant, indictment or information that he has been before convicted of two or more felony offenses under this section or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment or information, he shall be sentenced to imprisonment for life or for any period not less than five years, three years of which shall be a ~~minimum,~~ mandatory *minimum* term of imprisonment ~~not to be suspended in whole or in part and~~ to be served consecutively with any other sentence and *he* shall be fined not more than $500,000.

§ 18.2-248.5. Illegal stimulants and steroids; penalty.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), Chapter 34 of Title 54.1, it shall be unlawful for any person to knowingly manufacture, sell, give, distribute or possess with intent to manufacture, sell, give or distribute any anabolic steroid.

A violation of subsection A shall be punishable by a term of imprisonment of not less than one year nor more than ~~ten~~ *10* 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~~ *12* months or a fine of not more than $20,000, either or both. Any person violating the provisions of this subsection shall, upon conviction, be incarcerated for a ~~minimum,~~ mandatory *minimum* term of six months ~~which shall not be suspended in whole or in part and shall~~ *to* be served consecutively with any other sentence.

B. It shall be unlawful for any person to knowingly sell or otherwise distribute, without prescription, to a minor any pill, capsule or tablet containing any combination of caffeine and ephedrine sulfate.

A violation of this subsection B shall be punishable as a Class 1 misdemeanor.

§ 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty.

A. Except as authorized in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, it shall be unlawful for any person who is at least ~~eighteen~~ *18* years of age to knowingly or intentionally (i) distribute any drug classified in Schedule I, II, III or IV or marijuana to any person under ~~eighteen~~ *18* years of age who is at least three years his junior or (ii) cause any person under ~~eighteen~~ *18* years of age to assist in such distribution of any drug classified in Schedule I, II, III or IV or marijuana. Any person violating this provision shall upon conviction be imprisoned in a state correctional facility for a period not less than ~~ten~~ *10* nor more than ~~fifty~~ *50* years, and fined not more than $100,000. Five years of the sentence imposed ~~shall not be suspended, in whole or in part~~ for a conviction under this section involving a Schedule I or II controlled substance or one ounce or more of marijuana *shall be a mandatory minimum sentence.* Two years of the sentence imposed ~~shall not be suspended, in whole or in part,~~ for a conviction *under this section* involving less than one ounce of marijuana *shall be a mandatory minimum sentence.*

B. It shall be unlawful for any person who is at least ~~eighteen~~ *18* years of age to knowingly or intentionally (i) distribute any imitation controlled substance to a person under ~~eighteen~~ *18* years of age who is at least three years his junior or (ii) cause any person under ~~eighteen~~ *18* years of age to assist in such distribution of any imitation controlled substance. Any person violating this provision shall be guilty of a Class 6 felony.

§ 18.2-255.2. Prohibiting the sale of drugs on or near certain properties.

A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance or marijuana while (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; (iv) upon a designated school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity; (v) upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility or any public library; or (vi) upon the property of any state hospital as defined in § 37.1-1 or upon public property or property open to public use within 1,000 feet of such an institution. It is a violation of the provisions of this section if the person possessed the controlled substance, imitation controlled substance or marijuana on the property described in clauses (i) through (vi) of this subsection, regardless of where the person

intended to sell, give or distribute the controlled substance, imitation controlled substance or marijuana. Nothing in this section shall prohibit the authorized distribution of controlled substances.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than $100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control Act (§ 54.1-3400 et seq.) or more than one-half ounce of marijuana shall be punished by a ~~minimum,~~ mandatory *minimum* term of imprisonment of one year ~~which shall not be suspended in whole or in part and shall~~ *to* be served consecutively with any other sentence. However, if such person proves that he sold such controlled substance or marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he shall be guilty of a Class 1 misdemeanor.

C. If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby.

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

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional mandatory~~,~~ minimum period of five days or, if the level was more than 0.25, for an additional mandatory~~,~~ minimum period of 10 days. ~~The additional mandatory, minimum period of confinement shall not be suspended by the court.~~ In addition, such person shall be fined a mandatory~~,~~ minimum fine of $250~~, which shall not be suspended by the court~~.

B. 1. Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory~~,~~ minimum fine of $500~~, which shall not be suspended by the court,~~ and by confinement in jail for not less than one month nor more than one year. Five days of such confinement shall be a mandatory~~,~~ minimum sentence ~~not subject to suspension by the court~~.

2. Any person convicted of a second offense committed within a period of five to ~~ten~~ *10* years of a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory~~,~~ minimum fine of $500~~, which shall not be suspended by the court,~~ and by confinement in jail for not less than one month.

3. Upon conviction of a second offense within 10 years of a first offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional ~~minimum,~~ mandatory *minimum* period of 10 days or, if the level was more than 0.25, for an additional mandatory~~,~~ minimum period of 20 days. ~~The additional mandatory, minimum period of confinement shall not be suspended by the court.~~ In addition, such person shall be fined a mandatory~~,~~ minimum fine of $500~~, which shall not be suspended by the court~~.

C. Any person convicted of three or more offenses of § 18.2-266 committed within a 10-year period shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a mandatory~~,~~ minimum sentence of confinement for 10 days ~~that shall not be subject to suspension by the court~~. In addition, such person shall be fined a mandatory~~,~~ minimum fine of $1,000~~, which shall not be suspended by the court~~. Any person convicted of a third offense committed within five years of an offense under § 18.2-266 shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a mandatory~~,~~ minimum sentence of confinement for 30 days ~~that shall not be subject to suspension by the court~~. In addition, such person shall be fined a mandatory~~,~~ minimum fine of $1,000~~, which shall not be suspended by the court~~. The punishment of any person convicted of a fourth or subsequent offense committed within a 10-year period shall, upon conviction, include a mandatory~~,~~ minimum term of imprisonment of one year~~, none of which may be suspended in whole or in part~~. In addition, such person shall be fined a mandatory~~,~~ minimum fine of $1,000~~, which shall not be suspended by the court~~. Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed three years.

D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of $500 and not more than $1000 and (ii) sentenced to a mandatory~~,~~ minimum period of confinement of five days.

E. For the purpose of this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a prior conviction: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions 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 (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited.

A. If any person possesses any (i) stun weapon or taser as defined in this section, (ii) knife, except a pocket knife having a folding metal blade of less than three inches, or (iii) weapon, including a weapon of like kind, designated in subsection A of § 18.2-308, other than a firearm, upon (a) the property of any public, private or parochial elementary, middle or high school, including buildings and grounds, (b) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (c) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony; however, if the person possesses any firearm within a public, private or parochial elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall ~~not be eligible for probation and shall~~ be sentenced to a ~~minimum,~~ mandatory *minimum* term of imprisonment of five years~~, which shall not be suspended in whole or in part and which shall~~ *to* be served consecutively with any other sentence.

The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities, (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose, (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises, (iv) any law-enforcement officer while engaged in his duties as such, (v) any person who possesses a knife or blade which he uses customarily in his trade, or (vi) a person who possesses an unloaded firearm that is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer and "closed container" includes a locked vehicle trunk.

As used in this section:

"Stun weapon" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five milliamp 60 hertz shock and (ii) used for the purpose of temporarily incapacitating a person; and

"Taser" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile and (ii) used for the purpose of temporarily incapacitating a person.

§ 18.2-308.2. Possession or transportation of firearms, stun weapons, tasers or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of 29 who was found guilty as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or stun weapon or taser as defined by § 18.2-308.1 or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon or taser as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 ~~shall not be eligible for probation, and~~ shall be sentenced to a ~~minimum,~~ mandatory *minimum* term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony ~~shall not be eligible for probation, and~~ shall be sentenced to a ~~minimum,~~ mandatory *minimum* term of imprisonment of two years. The ~~minimum,~~ mandatory *minimum* terms of imprisonment prescribed for violations of this section ~~shall not be suspended in whole or in part and~~ shall be served consecutively with any other sentence. Any firearm, stun weapon or taser as defined by § 18.2-308.1, or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or

other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm, stun weapon or taser under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm, stun weapon or taser; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection.

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms; firearm safety information to be provided.

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only, in addition to the information required by subdivision B 1, the identical information required to be included on the firearms transaction record required by regulations administered by the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury, except that the copies of such forms mailed or delivered to the Department of State Police shall not include any information related to the firearm purchased or transferred.

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent as specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested criminal history record information by a telephone call to the State Police and is authorized by subdivision B 2 of this section to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense, and other documentation of residence. Except where the photo-identification was issued by the United States Department of Defense, the other documentation of residence shall show an address identical to that shown on the photo-identification form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; other current identification allowed as evidence of residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 79-7; or other documentation of residence determined to be acceptable by the Department of Criminal Justice Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the photo-identification was issued by the Department of Defense, permanent orders may be used as documentation of residence. Additionally, when the photo-identification presented to a dealer by the prospective purchaser is a driver's license or other photo-identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo-identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the United States State Department, a certificate of citizenship or a certificate of naturalization issued by the ~~Immigration and Naturalization Service~~ *United States Citizenship and Immigration Services*, an unexpired U.S. passport, a United States citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other documentation of status as a person lawfully admitted for permanent residence issued by the ~~Immigration and Naturalization Service~~ *United States Citizenship and Immigration Services.*

Upon receipt of the request for a criminal history record information check, the State Police shall (1) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (2) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (3) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's call, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision B 1 of this subsection may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision B 1 of this subsection and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of 12 months, and such log shall consist of the name of the purchaser, the dealer identification number, the unique approval number and the transaction date.

4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by persons who are citizens of the United States or persons lawfully admitted for permanent residence but residents of other states under the terms of subsections A and B upon furnishing the dealer with proof of citizenship or status as a person lawfully admitted for permanent residence and one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include December 25.

C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, other than a rifle or a shotgun, to any person who is not a resident of Virginia unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law. The dealer shall obtain the required report by mailing or delivering the written consent form required under subsection A to the State Police within 24 hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within 10 days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.

D. Nothing herein shall prevent a resident of this Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer by obtaining a criminal history record information check through the dealer as provided in subsection C.

E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 days of such denial.

F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section shall be guilty of a Class 2 misdemeanor.

G. For purposes of this section:

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

4. Any curio or relic as defined in this subsection.

"Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

"Curios or relics" means firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant to this section.

I. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq., (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government, (iii) antique firearms, or (iv) transactions in any county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than this section.

J. All licensed firearms dealers shall collect a fee of $2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of $5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 felony. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years~~, which shall not be suspended in whole or in part nor shall the person be eligible for parole during that period~~.

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of a Class 5 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years~~, which shall not be suspended in whole or in part nor shall the person be eligible for parole during that period~~.

O. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating whether the driver's license is an original, duplicate or renewed driver's license.

P. The Department of Education, in conjunction with the Department of Game and Inland Fisheries, shall develop a standard informational form and posted notice to be furnished to each licensed firearms dealer in the Commonwealth at no cost to the dealer. The form and notice shall provide basic information of the laws governing the purchase, possession and use of firearms by juveniles and adults.

Copies of the form shall be made available by the dealer whenever a firearm is purchased.

Every firearms dealer shall conspicuously post the written notice which shall be at least eight and one-half inches by ~~eleven~~ *11* inches in size and printed in boldface type of a minimum size of 10 points. A licensed firearms dealer shall not be liable for damages for injuries resulting from the discharge of a firearm purchased from the dealer if, at the time of the purchase, the dealer failed to provide the form or failed to post the written notice.

Q. Except as provided in subdivisions 1, 2 and 3 of this subsection, it shall be unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an enhanced background check, as described herein, by special application to the Department of State Police listing the number and type of handguns to be purchased and transferred for lawful business or personal use, in a collector series, for collections, as a bulk purchase from estate sales and for similar purposes. Such applications shall be signed under oath by the applicant on forms provided by the Department of State Police, shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales report required by the Bureau of Alcohol, Tobacco and Firearms (ATF). The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above the limit.

Upon being satisfied that these requirements have been met, the Department of State Police shall forthwith issue to the applicant a nontransferable certificate which shall be valid for seven days from the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates forthwith pursuant to this subsection. Applications and certificates issued under this subsection shall be maintained as records as provided in subdivision 3 of subsection B. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subsection and all records provided for in subdivision 3 of subsection B.

2. The provisions of this subsection shall not apply to:

a. A law-enforcement agency;

b. An agency duly authorized to perform law-enforcement duties;

c. State and local correctional facilities;

d. A private security company licensed to do business within the Commonwealth;

e. The purchase of antique firearms as herein defined;

f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, the description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police; or

g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day.

3. For the purposes of this subsection, "purchase" shall not include the exchange or replacement of a handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange

or replacement within the 30-day period immediately preceding the date of exchange or replacement.

§ 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.

B. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony and any person convicted hereunder ~~is not eligible for probation and~~ shall be sentenced to a ~~minimum,~~ mandatory *minimum* term of imprisonment of two years~~, which shall not be suspended in whole or in part~~. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana. A violation of this subsection is a Class 6 felony, and constitutes a separate and distinct felony and any person convicted hereunder ~~is not eligible for probation and~~ shall be sentenced to a ~~minimum,~~ mandatory *minimum* term of imprisonment of five years~~, which shall not be suspended in whole or in part~~. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

D. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.

§ 19.2-120. Admission to bail.

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or

2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;

2. An offense for which the maximum sentence is life imprisonment or death;

3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is ~~ten~~ *10* years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;

4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and provides for a ~~minimum,~~ mandatory *minimum* sentence;

5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;

6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;

7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged; or

8. A violation of § 18.2-46.5 or § 18.2-46.7.

C. The court shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;

2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

3. The nature and seriousness of the danger to any person or the community that would be posed by

the person's release.

D. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2-124.

§ 30-19.1:4. Increase in terms of imprisonment or commitment; fiscal impact statements; appropriations for operating costs.

A. The Virginia Criminal Sentencing Commission shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill which would result in a net increase in periods of imprisonment in state adult correctional facilities. The Department of Planning and Budget shall annually provide the Virginia Criminal Sentencing Commission with the operating cost per inmate.

B. The Department of Planning and Budget, in conjunction with the Department of Juvenile Justice, shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill that would result in a net increase in periods of commitment to the custody of the Department of Juvenile Justice.

C. The requirement for a fiscal impact statement includes, but is not limited to, those bills which add new crimes for which imprisonment or commitment is authorized, increase the periods of imprisonment or commitment authorized for existing crimes, impose minimum or mandatory *minimum* terms of imprisonment or commitment, or modify the law governing release of prisoners or juveniles in such a way that the time served in prison, or the time committed to the custody of the Department of Juvenile Justice, will increase.

D. The fiscal impact statement of any bill introduced on or after July 1, 2002, that would result in a net increase in periods of imprisonment in state correctional facilities or periods of commitment to the custody of the Department of Juvenile Justice, shall include an analysis of the fiscal impact on local and regional jails, state and local community corrections programs and juvenile detention facilities.

E. The amount of the estimated appropriation reflected in the fiscal impact statement shall be printed on the face of each such bill, but shall not be codified. If the agency responsible for preparing the fiscal impact statement does not have sufficient information to project the impact, the fiscal impact statement shall state this, and the words "Cannot be determined" shall be printed on the face of each such bill.

F. The fiscal impact statement shall include, but not be limited to, details as to any increase or decrease in the offender population. Statements prepared by the Virginia Criminal Sentencing Commission shall detail any necessary adjustments in guideline midpoints for the crime or crimes affected by the bill as well as adjustments in guideline midpoints for other crimes affected by the implementation of the bill that, in the opinion of the Commission, are necessary and appropriate.

G. The agency preparing the fiscal impact statement shall forward copies of such impact statements to the Clerk of the House of Delegates and the Clerk of the Senate for transmittal to each patron of the legislation and to the chairman of each committee of the General Assembly to consider the legislation.

H. For each law enacted which results in a net increase in periods of imprisonment in state correctional facilities or a net increase in periods of commitment or the time committed to the custody of the Department of Juvenile Justice, a one-year appropriation shall be made from the general fund equal to the estimated increase in operating costs of such law, in current dollars, of the highest of the next six fiscal years following the effective date of the law. "Operating costs" means all costs other than capital outlay costs.

I. The Corrections Special Reserve Fund (the Fund) is hereby established as a nonreverting special fund on the books of the Comptroller. The Fund shall consist of all moneys appropriated by the General Assembly under the provisions of this section and all interest thereon. Any moneys deposited in the Fund shall remain in the Fund at the end of the biennium. Moneys in the Fund shall be expended solely for capital expenses, including the cost of planning or preplanning studies that may be required to initiate capital outlay projects.

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.

A. In addition to any other penalty provided by this section, any motor vehicle administratively impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be impounded or immobilized for an additional period of up to ~~ninety~~ *90* days upon conviction of an offender for driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for (i) a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction or (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2. However, if, at the time of the violation, the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the offender prior to the release of his motor vehicle.

B. Except as provided in §§ 46.2-304 and 46.2-357, no resident or nonresident (i) whose driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who

has been directed not to drive by any court, by the Commissioner, or by operation of law pursuant to this title or (iii) who has been forbidden, as prescribed by law, by the Commissioner, the State Corporation Commission, the Commonwealth Transportation Commissioner, any court, or the Superintendent of State Police, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the period of such suspension or revocation has terminated. A clerk's notice of suspension of license for failure to pay fines or costs given in accordance with § 46.2-395 shall be sufficient notice for the purpose of maintaining a conviction under this section. For the purposes of this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.

C. A first or second offense of violating this section shall constitute a Class 1 misdemeanor. A third or subsequent offense shall constitute a Class 1 misdemeanor punishable by a ~~minimum,~~ mandatory *minimum* term of confinement in jail of ~~ten~~ *10* days ~~which shall not be suspended in whole or in part~~. However, the court shall not be required to impose a ~~minimum,~~ mandatory *minimum* term of confinement in any case where a motor vehicle is operated in violation of this section in a situation of apparent extreme emergency which requires such operation to save life or limb.

In addition, the court shall suspend the person's driver's license for the same period for which it had been previously suspended or revoked when the person violated this section.

D. In the event the person has violated this section by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for an additional period not to exceed ~~ninety~~ *90* days. Any additional suspension ordered under the provisions of this section shall commence upon the expiration of the previous suspension or revocation unless the previous suspension or revocation has expired prior to the ordering of an additional suspension or revocation.

§ 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense; prior conviction.

Any person violating any provision of subsection A of § 46.2-341.24 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense committed within less than five years after a first offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than $200 nor more than $2,500 and by confinement in jail for not less than one month nor more than one year. Five days of such confinement shall be a mandatory, minimum sentence ~~not subject to suspension by the court~~. Any person convicted of a second offense committed within a period of five to ~~ten~~ *10* years of a first offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than $200 nor more than $2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense committed within ~~ten~~ *10* years of an offense under subsection A of § 46.2-341.24 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~~ *10* years of a first offense.

For the purposes of this section a conviction or finding of not innocent in the case of a juvenile under (i) § 18.2-51.4 or § 18.2-266, (ii) the ordinance of any county, city or town in this Commonwealth substantially similar to the provisions of § 18.2-51.4 or § 18.2-266, (iii) subsection A of § 46.2-341.24, or (iv) the laws of any other state substantially similar to the provisions of §§ 18.2-51.4, 18.2-266 or subsection A of § 46.2-341.24, shall be considered a prior conviction.

§ 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 Class 1 misdemeanor punishable by a ~~minimum,~~ mandatory *minimum* term of confinement in jail ~~for no less than ten~~ *of 10* days, ~~which shall not be suspended~~ except in cases ~~designated in subdivision 2 (ii) of this subsection~~ *wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended.*

2. If such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24, irrespective of whether the driving of itself endangers the life, limb or property of another and the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24, 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, *one year of which shall be a mandatory minimum term of confinement* or, in the discretion of the jury or the court trying the case without a jury, by *mandatory minimum* confinement in jail for ~~twelve~~ *a period of 12* 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~~ *that* require such operation to save life or limb, ~~said~~ *the* sentence, or any part thereof, may be suspended. For the purposes of this section, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of law herein shall be considered an offense in violation of such provision of law.

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 to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of drugs or intoxicants), if the subsequent violation occurred within ~~ten~~ *10* years from the prior violation, or (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within ~~ten~~ *10* years of the prior offense. However, if the Commissioner has received a copy of a court order authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. For the purposes of this subsection, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of Virginia law herein shall be considered an offense in violation of such provision of Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so unless the requirement for completion of the program has been waived by the court for good cause shown.

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1 or § 18.2-51.4 or (ii) adjudged to be a third offender within a period of ~~ten~~ *10* years in violation of the provisions of subsection A of § 46.2-341.24 or § 18.2-266, or a substantially similar ordinance or law of any other jurisdiction.

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, or, if a nonresident of Virginia, any circuit court:

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 condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a period of at least six months, and upon whatever other 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

E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

F. Any period of driver's license revocation imposed pursuant to this section shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

G. Nothing in this section shall prohibit a 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 such tract of land when the distance between the tracts is no more than five miles.

H. Any person who operates 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, where the provisions of subsection D do not apply, shall be guilty of a violation of § 18.2-272.

§ 53.1-116. What records and policy jailer shall keep; how time deducted or added for felons and misdemeanants; payment of fine and costs by person committed to jail until he pays.

A. The jailer shall keep a (i) record describing each person committed to jail, the terms of confinement, for what offense or cause he was committed, and when received into jail; (ii) record of each prisoner; and (iii) written policy stating the criteria for and conditions of earned credit in the facility.

Unless he is serving a mandatory minimum sentence of confinement, each prisoner sentenced to 12 months or less for a misdemeanor or any combination of misdemeanors shall earn good conduct credit at the rate of one day for each one day served, including all days served while confined in jail prior to conviction and sentencing, in which the prisoner has not violated the written rules and regulations of the jail ~~unless a mandatory minimum sentence is imposed by law~~. Prisoners eligible for parole under §§ 53.1-151, 53.1-152 or § 53.1-153 shall earn good conduct credit at a rate of 15 days for each 30 days served with satisfactory conduct.

The jailer may grant the prisoner additional credit for performance of institutional work assignments or participation in a local work force program at the rate of five days for every 30 days served. The time so deducted shall be allowed to each prisoner for such time as he is confined in jail. For each violation of the rules prescribed herein, the time so deducted shall be added until it equals the full sentence imposed upon the prisoner by the court.

However, any prisoner committed to jail upon a felony offense committed on or after January 1, 1995, shall not earn good conduct credit, sentence credit, earned sentence credit, other credit, or a combination of any credits in excess of that permissible under Article 4 (§ 53.1-202.2 et seq.) of Chapter 6 of this title. So much of an order of any court contrary to the provisions of this section shall be deemed null and void.

B. Notwithstanding the provisions of § 19.2-350, in the event a person who was committed to jail to be therein confined until he pays a fine imposed on him by the court in which he was tried should desire to pay such fine and costs, he may pay the same to the person in charge of the jail. The person receiving such moneys shall execute and deliver an official receipt therefor and shall promptly transmit the amount so paid to the clerk of the court which imposed the fine and costs. Such clerk shall give him an official receipt therefor and shall properly record the receipt of such moneys.

C. The administrator of a local or regional jail shall not assign a person to a home/electronic incarceration program pursuant to subsection C of § 53.1-131.2 in a locality which has a jail operated by a sheriff, without the consent of the sheriff.

§ 53.1-203. Felonies by prisoners; penalties.

It shall be unlawful for a prisoner in a state, local or community correctional facility or in the custody of an employee thereof to:

1. Escape from a correctional facility or from any person in charge of such prisoner;

2. Willfully break, cut or damage any building, furniture, fixture or fastening of such facility or any part thereof for the purpose of escaping, aiding any other prisoner to escape therefrom or rendering such facility less secure as a place of confinement;

3. Make, procure, secrete or have in his possession any instrument, tool or other thing for the purpose of escaping from or aiding another to escape from a correctional facility or employee thereof;

4. Make, procure, secrete or have in his possession a knife, instrument, tool or other thing not authorized by the superintendent or sheriff which is capable of causing death or bodily injury;

5. Procure, sell, secrete or have in his possession any chemical compound which he has not lawfully received;

6. Procure, sell, secrete or have in his possession a controlled substance classified in Schedule III of the Drug Control Act (§ 54.1-3400 et seq.) or marijuana;

7. Introduce into a correctional facility or have in his possession firearms or ammunition for firearms;

House Bill 1060

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 462

An Act to amend and reenact §§ 15.2-926, 16.1-278.8, 18.2-46.1, 18.2-258, 18.2-308 and 29.1-338 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 8.01-27.3, 8.01-226.8, 8.01-226.9, 15.2-912.2, 15.2-912.3, 15.2-915.2 and 15.2-915.3, by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered 15.2-926.2, by adding sections numbered 15.2-1209.1 and 15.2-1812.2, and by adding in Chapter 2 of Title 48 sections numbered 48-16 and 48-17, and to repeal §§ 18.2-105, 18.2-138.1, 18.2-287, 18.2-287.1, 18.2-340.32, 18.2-389, 18.2-432 and 18.2-433 of the Code of Virginia, relating to relocating certain statutes currently in Title 18.2.

[H 1060]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-926, 16.1-278.8, 18.2-46.1, 18.2-258, 18.2-308 and 29.1-338 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 8.01-27.3, 8.01-226.8, 8.01-226.9, 15.2-912.2, 15.2-912.3, 15.2-915.2 and 15.2-915.3, by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered 15.2-926.2, by adding sections numbered 15.2-1209.1 and 15.2-1812.2, and by adding in Chapter 2 of Title 48 sections numbered 48-16 and 48-17 as follows:

§ 8.01-27.3. Evidence in actions regarding issuance of bad check.

In any civil action growing out of an arrest under § 18.2-181 or § 18.2-182, no evidence of statements or representations as to the status of the check, draft, order or deposit involved, or of any collateral agreement with reference to the check, draft, or order, shall be admissible unless such statement, or representation, or collateral agreement, is written upon the instrument at the time it is given by the drawer.

§ 8.01-226.8. Civil immunity for causing the arrest of a person for a bad check.

If payment of any check, draft, or order for the payment of money is refused by the financial institution, trust company or other depository upon which such instrument is drawn, and the person who drew or uttered such instrument is arrested or prosecuted under the provisions of § 18.2-181 or § 18.2-182, for failure or refusal to pay such instrument, the one who arrested or caused such person to be arrested and prosecuted, or either, shall be conclusively deemed to have acted with reasonable or probable cause in any suit for damages that may be brought by the person who drew or uttered such instrument, if the one who arrested or caused such person to be arrested and prosecuted, or either, shall have, before doing so, presented or caused such instrument to be presented to the depository on which it was drawn where it was refused, and then waited five days after notice, as provided in § 18.2-183, without the amount due under the provisions of such instrument being paid.

§ 8.01-226.9. Exemption from civil liability in connection with arrest or detention of person suspected of shoplifting.

A merchant, agent or employee of the merchant, who causes the arrest or detention of any person pursuant to the provisions of §§ 18.2-95, 18.2-96 or § 18.2-103, shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his agent or employee, provided that, in causing the arrest or detention of such person, the merchant, agent or employee of the merchant, had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located shall constitute probable cause for the detention of such person by such merchant, his agent or employee, provided such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an antishoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected area within such premises, of specially marked or tagged merchandise.

§ 15.2-912.2. Regulation of bingo and instant bingo; proceeds exempt from local taxation.

A. Any locality may by ordinance consistent with Article 1.1:1 (§ 18.2-340.15) of Chapter 8 of Title 18.2 and the regulations of the Charitable Gaming Board (i) prohibit the playing of instant bingo and (ii) establish reasonable hours during which bingo games may be played within such locality. If the

governing body of any town adopts an ordinance pursuant to the provisions of this section, such town shall not be subject to any ordinance adopted by the county within which such town lies.

B. No locality may impose a gross receipts, entertainment, admission or any other tax based on revenues of qualified organizations derived from the conduct of charitable gaming.

The definitions set forth in § 18.2-340.16 shall apply to this section.

§ 15.2-912.3. Regulation of dance halls by counties, cities and towns.

For the purposes of this section, "public dance hall" means any place open to the general public where dancing is permitted; however, a restaurant located in any city licensed under § 4.1-210 to serve food and beverages having a dance floor with an area not exceeding 10 percent of the total floor area of the establishment shall not be considered a public dance hall.

Any locality may by ordinance regulate public dance halls in such locality, and prescribe punishment for violation of such ordinance not to exceed that prescribed for a Class 3 misdemeanor.

Such ordinance shall prescribe for: (i) the issuance of permits to operate public dance halls, grounds for revocation and procedure for revocation of such permits; (ii) a license tax not to exceed $600 on every person operating or conducting any such dance hall; and (iii) rules and regulations for the operation of such dance halls. Such ordinances may exempt from their operation dances held for benevolent or charitable purposes and dances conducted under the auspices of religious, educational, civic or military organizations.

No county ordinance adopted under the provisions of this section shall be in effect in any town in which an ordinance adopted under the provisions of this section is in effect.

§ 15.2-915.2. Regulation of transportation of a loaded rifle or shotgun.

The governing body of any county or city may by ordinance make it unlawful for any person to transport, possess or carry a loaded shotgun or loaded rifle in any vehicle on any public street, road, or highway within such locality. Any violation of such ordinance shall be punishable by a fine of not more than $100. Game wardens, sheriffs and all other law-enforcement officers shall enforce the provisions of this section. No ordinance adopted pursuant to this section shall be enforceable unless the governing body adopting such ordinance so notifies the Director of the Department of Game and Inland Fisheries by registered mail prior to May 1 of the year in which such ordinance is to take effect.

The provisions of this section shall not apply to duly authorized law-enforcement officers or military personnel in the performance of their lawful duties, nor to any person who reasonably believes that a loaded rifle or shotgun is necessary for his personal safety in the course of his employment or business.

§ 15.2-915.3. Requiring fingerprinting for concealed handgun permit.

Notwithstanding § 15.2-915, a county or city may by ordinance require any applicant for a concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state or national criminal history record.

§ 15.2-926. Prohibiting loitering; frequenting amusements and curfew for minors; penalty.

A. Any locality may by ordinance prohibit loitering in, upon or around any public place, whether on public or private property. Any locality may by ordinance also prohibit minors who are not attended by their parents from frequenting or being in public places, whether on public or private property, at such times, between 10:00 p.m. and 6:00 a.m., as the governing body deems proper.

A violation of such ordinances by a minor shall be disposed of as provided in §§ 16.1-278.4 and 16.1-278.5.

B. A locality may by ordinance regulate the frequenting, playing in or loitering in public places of amusement by minors, and may prescribe punishment for violations of such ordinances not to exceed that prescribed for a Class 3 misdemeanor.

§ 15.2-926.2. Adoption of ordinances prohibiting obscenity.

The locality may adopt ordinances to prohibit obscenity or conduct paralleling the provisions of Article 5 (§ 18.2-372 et seq.) and Article 6 (§ 18.2-390 et seq.) of Chapter 8 of Title 18.2 and prohibiting the dissemination to juveniles of, and their access to, materials deemed harmful to juveniles as defined in subsection (6) of § 18.2-390 in public at places frequented by juveniles or where juveniles are or may be invited as part of the general public. Exceptions as provided in § 18.2-391.1 shall apply thereto. The penalty for violating the provisions of such ordinance shall not be greater than the penalty imposed for a Class 1 misdemeanor.

§ 15.2-1209.1. Counties may regulate carrying of loaded firearms on public highways.

The governing body of any county is hereby empowered to adopt ordinances making it unlawful for any person to carry or have in his possession while on any part of a public highway within such county a loaded firearm when such person is not authorized to hunt on the private property on both sides of the highway along which he is standing or walking; and to provide a penalty for violation of such ordinance not to exceed a fine of $100. The provisions of this section shall not apply to persons carrying loaded firearms in moving vehicles, or to persons acting at the time in defense of persons or property.

§ 15.2-1812.2. Willful and malicious damage to or defacement of public or private facilities; penalty.

A. Any locality may by ordinance make unlawful the willful and malicious damage to or defacement of any public buildings, facilities and personal property or of any private buildings, facilities and

personal property if the damage to the private property is less than $1,000. The penalty for violation of such ordinance is a Class 1 misdemeanor.

B. Upon a finding of guilt under any such ordinance in any case tried before the court without a jury, in the event the violation constitutes a first offense that results in property damage or loss, the court, without entering a judgment of guilt, upon motion of the defendant, may defer further proceedings and place the defendant on probation pending completion of a plan of community service work. If the defendant fails or refuses to complete the community service as ordered by the court, the court may make final disposition of the case and proceed as otherwise provided. If the community service work is completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying the ordinance in subsequent proceedings.

C. The ordinance shall direct that the community service, to the extent feasible, include the repair, restoration or replacement of any damage or defacement to property within the locality, and may include clean-up, beautification, landscaping or other appropriate community service within the locality. Any ordinance adopted pursuant to this section shall make provision for a designee of the locality to supervise the performance of any community service work required and to report thereon to the court imposing such requirement. At or before the time of sentencing under the ordinance, the court shall receive and consider any plan for making restitution or performing community service submitted by the defendant. The court shall also receive and consider the recommendations of the supervisor of community service in the locality concerning the plan.

D. Notwithstanding any other provision of law, no person convicted of a violation of an ordinance adopted pursuant to this section shall be placed on probation or have his sentence suspended unless such person makes at least partial restitution for such property damage or is compelled to perform community services, or both, as is more particularly set forth in § 19.2-305.1.

§ 16.1-278.8. Delinquent juveniles.

A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278;

2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;

3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile and his parent;

4. Defer disposition for a period of time not to exceed ~~twelve~~ *12* months, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the juvenile (i) has been found delinquent for an offense which would be a Class 1 misdemeanor or felony if committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department, and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;

5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a period not to exceed ~~twelve~~ *12* months and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile where the court determines this participation to be in the best interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;

7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the

habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at ~~thirty~~ *30*-day intervals;

8. Impose a fine not to exceed $500 upon such juvenile;

9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such terms and conditions as the court may order. The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school. The restricted permit shall be issued in accordance with the provisions of such subsection. However, only an abstract of the court order which identifies the juvenile and the conditions under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the physical custody of the court during any period of curfew restriction. The court shall send an abstract of any order issued under the provisions of this section to the Department of Motor Vehicles, which shall preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order in accordance with its terms.

Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order imposing the curfew;

10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the juvenile was found to be delinquent;

11. Require the juvenile to participate in a public service project under such conditions as the court prescribes;

12. In case of traffic violations, impose only those penalties which are authorized to be imposed on adults for such violations. However, for those violations punishable by confinement if committed by an adult, confinement shall be imposed only as authorized by this title;

13. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the juvenile;

b. A child welfare agency, private organization or facility which is licensed or otherwise authorized by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the approval of the Director; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the juvenile has residence if other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed ~~fourteen~~ *14* days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when such local board consents to the commitment. The board to which the juvenile is committed shall have the final authority to determine the appropriate placement for the juvenile. Any order authorizing removal from the home and transferring legal custody of a juvenile to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so state;

14. Commit the juvenile to the Department of Juvenile Justice, but only if he is ~~eleven~~ *11* years of age or older and the current offense is (i) an offense which would be a felony if committed by an adult, (ii) an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense which would be a felony if committed by an adult, or (iii) an offense which would be a Class 1 misdemeanor if committed by an adult and the

juvenile has previously been adjudicated delinquent on three occasions for offenses which would be Class 1 misdemeanors if committed by an adult;

15. Impose the penalty authorized by § 16.1-284;

16. Impose the penalty authorized by § 16.1-284.1;

17. Impose the penalty authorized by § 16.1-285.1;

18. Impose the penalty authorized by § 16.1-278.9; or

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, or any violation of a local ordinance adopted pursuant to § ~~18.2-138.1~~ *15.2-1812.2*.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147; or for any violation of a local ordinance adopted pursuant to § ~~18.2-138.1~~ *15.2-1812.2*. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

§ 18.2-46.1. Definitions.

As used in this article unless the context requires otherwise or it is otherwise provided:

"Act of violence" means those felony offenses described in subsection A of § 19.2-297.1.

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more predicate criminal acts, (ii) which has an identifiable name or identifying sign or symbol, and (iii) whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

"Pattern of criminal gang activity" means commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such predicate criminal acts (i) were not part of a common act, transaction or scheme or (ii) were committed by two or more persons who are members of, or belong to, the same criminal street gang.

"Predicate criminal act" means an act of violence, any violation of §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, or any violation of a local ordinance adopted pursuant to § ~~18.2-138.1~~ *15.2-1812.2*.

§ 18.2-258. Certain premises deemed common nuisance; penalty.

~~A.~~ Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse, dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, which with the knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant thereof, is frequented by persons under the influence of illegally obtained controlled substances or marijuana, as defined in § 54.1-3401, or for the purpose of illegally obtaining possession of, manufacturing or distributing controlled substances or marijuana, or is used for the illegal possession, manufacture or distribution of controlled substances or marijuana, shall be deemed a common nuisance. Any such owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant who knowingly permits, establishes, keeps or maintains such a common nuisance is guilty of a Class 1 misdemeanor and, for a second or subsequent offense, a Class 6 felony. ~~In addition, after due notice and opportunity to be heard on the part of any owner, lessor, or a lienholder not involved in the original offense, by a proceeding similar to that in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and upon proof of guilty knowledge, a court may order that such house, motor vehicle, aircraft, boat, vessel, or other premises, or any room or part thereof, be closed, but the court may, upon the owner or lessor giving bond in the penalty of not less than $500 and with security to be approved by the court, conditioned that the premises shall not be used for unlawful purposes, turn the same over to its owner or lessor, or proceeding may be had in equity as provided in § 18.2-258.01.~~

~~B. The penalties provided in this section shall be in addition to any other penalty provided by law, including immediate termination of a rental agreement as provided in § 55-248.31.~~

~~C. In no civil or in rem proceeding under the provisions of this section shall judgment be entered against the owner, lessor, or lienholder of property unless it is proved: (i) that he knew of the unlawful use of the property and (ii) that he had the right, because of such unlawful use, to enter and repossess the property.~~

§ 18.2-308. Personal protection; carrying concealed weapons; when lawful to carry.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts

connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he shall be guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. Any weapon used in the commission of a violation of this section shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the Division of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 18.2-310. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

Except as provided in subsection J 1, this section shall not apply to:

1. Any person while in his own place of business;

2. Any police officers, including Capitol Police officers, sergeants, sheriffs, deputy sheriffs or regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1;

3. Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;

4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;

5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;

6. Campus police officers appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

7. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions; and

8. Any State Police officer retired from the Department of State Police, any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth and any special agent retired from the State Corporation Commission or the Alcoholic Beverage Control Board (i) with a service-related disability or (ii) following at least ~~fifteen~~ *15* years of service with any such law-enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of subsection P, any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

C. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. [Repealed.]

4. Conservators of the peace, except that the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in subsection D hereof: (a) notaries public; (b) registrars; (c) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (d) commissioners in chancery;

5. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29;

6. Law-enforcement agents of the Armed Forces of the United States and federal agents who are otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;

7. Law-enforcement agents of the United States Naval Criminal Investigative Service; and

8. Harbormaster of the City of Hopewell.

D. Any person ~~twenty-one~~ *21* years of age or older may apply in writing to the clerk of the circuit

court of the county or city in which he resides, or if he is a member of the United States Armed Forces, the county or city in which he is domiciled, for a five-year permit to carry a concealed handgun. ~~Notwithstanding § 15.2-915, a county or city may enact an ordinance that requires any applicant for a concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state or national criminal history record.~~ The application shall be made under oath before a notary or other person qualified to take oaths and shall be made only on a form prescribed by the Department of State Police, in consultation with the Supreme Court, requiring only that information necessary to determine eligibility for the permit. The court shall consult with either the sheriff or police department of the county or city and receive a report from the Central Criminal Records Exchange. As a condition for issuance of a concealed handgun permit, the applicant shall submit to fingerprinting if required by local ordinance in the county or city where the applicant resides and provide personal descriptive information to be forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant, and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies. Where feasible and practical, the local law-enforcement agency may transfer information electronically to the State Police instead of inked fingerprint cards. Upon completion of the criminal history records check, the State Police shall return the fingerprint cards to the submitting local agency or, in the case of scanned fingerprints, destroy the electronic record. The local agency shall then promptly notify the person that he has ~~twenty-one~~ *21* days from the date of the notice to request return of the fingerprint cards, if any. All fingerprint cards not claimed by the applicant within ~~twenty-one~~ *21* days of notification by the local agency shall be destroyed. All optically scanned fingerprints shall be destroyed upon completion of the criminal history records check without requiring that the applicant be notified. Fingerprints taken for the purposes described in this section shall not be copied, held or used for any other purposes. The court shall issue the permit within ~~forty-five~~ *45* days of receipt of the completed application unless it is determined that the applicant is disqualified. An application is deemed complete when all information required to be furnished by the applicant is delivered to and received by the clerk of court before or concomitant with the conduct of a state or national criminal history records check. If the applicant is later found by the court to be disqualified, the permit shall be revoked.

E. The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or § 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to former § 37.1-134.1 or § 37.1-134.16 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance or of public drunkenness within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the Armed Forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who it is alleged, in a sworn written statement submitted to the court by the sheriff, chief of police or attorney for the Commonwealth in the opinion of such sheriff, chief of police or attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police or the attorney for the Commonwealth shall be based upon personal knowledge or upon the sworn written statement of a competent person having personal knowledge.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § 18.2-280 or § 18.2-286.1 or brandishing of a firearm in violation of § 18.2-282 within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within ~~sixteen~~ *16* years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions."

17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.

18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.

19. An individual not otherwise ineligible pursuant to this section, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or of a criminal offense of illegal possession or distribution of marijuana or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this section, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or upon a charge of illegal possession or distribution of marijuana or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

F. The making of a materially false statement in an application under this section shall constitute perjury, punishable as provided in § 18.2-434.

G. The court may further require proof that the applicant has demonstrated competence with a handgun and the applicant may demonstrate such competence by one of the following, but no applicant shall be required to submit to any additional demonstration of competence:

1. Completing any hunter education or hunter safety course approved by the Department of Game and Inland Fisheries or a similar agency of another state;

2. Completing any National Rifle Association firearms safety or training course;

3. Completing any firearms safety or training course or class available to the general public offered by a law-enforcement agency, junior college, college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or the Department of Criminal Justice Services;

4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition or current military service or proof of an honorable discharge from any branch of the armed services;

6. Obtaining or previously having held a license to carry a firearm in this Commonwealth or a locality thereof, unless such license has been revoked for cause;

7. Completing any firearms training or safety course or class conducted by a state-certified or National Rifle Association-certified firearms instructor;

8. Completing any governmental police agency firearms training course and qualifying to carry a firearm in the course of normal police duties; or

9. Completing any other firearms training which the court deems adequate.

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this subsection.

H. The permit to carry a concealed handgun shall specify only the following information: name, address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee; the signature of the judge issuing the permit, or of the clerk of court who has been authorized to sign such permits by the issuing judge; the date of issuance; and the expiration date. The person issued the permit shall have such permit on his person at all times during which he is carrying a concealed handgun and must display the permit and a photo-identification issued by a government agency of the Commonwealth or by the United States Department of Defense or United States State Department (passport) upon demand by a law-enforcement officer.

I. Persons who previously have held a concealed handgun permit shall be issued, upon application as provided in subsection D, a new five-year permit unless there is good cause shown for refusing to reissue a permit. If the circuit court denies the permit, the specific reasons for the denial shall be stated in the order of the court denying the permit. Upon denial of the application, the clerk shall provide the person with notice, in writing, of his right to an ore tenus hearing. Upon request of the applicant made within ~~twenty-one~~ *21* days, the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented by counsel, but counsel shall not be appointed, and the rules of evidence shall apply. The final order of the court shall include the court's findings of fact and conclusions of law.

J. Any person convicted of an offense that would disqualify that person from obtaining a permit under subsection E or who violates subsection F shall forfeit his permit for a concealed handgun and surrender it to the court. Upon receipt by the Central Criminal Records Exchange of a record of the arrest, conviction or occurrence of any other event which would disqualify a person from obtaining a concealed handgun permit under subsection E, the Central Criminal Records Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction or other event.

J1. Any person permitted to carry a concealed handgun, who is under the influence of alcohol or illegal drugs while carrying such handgun in a public place, shall be guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of § 18.2-36.1, maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. Upon such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

J2. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision E 14 or E 15, holding a permit for a concealed handgun, may have the permit suspended by the court before which such charge is pending or by the court which issued the permit.

J3. No person shall carry a concealed handgun onto the premises of any restaurant or club as defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia; however, nothing herein shall prohibit any sworn law-enforcement officer from carrying a concealed handgun on the premises of such restaurant or club or any owner or event sponsor or his employees from carrying a concealed handgun while on duty at such restaurant or club if such person has a concealed handgun permit.

J4. Any individual for whom it would be unlawful to purchase, possess or transport a firearm under § 18.2-308.1:2 or § 18.2-308.1:3, who holds a concealed handgun permit, may have the permit suspended by the court which issued the permit during the period of incompetency, incapacity or disability.

K. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a law-enforcement officer with the Department of State Police or with a sheriff or police department, bureau or force of any political subdivision of the Commonwealth, after completing ~~fifteen~~ *15* years of service or after reaching age ~~fifty-five~~ *55*; (iii) as a law-enforcement officer with the United States Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, ~~Immigration and Naturalization Service~~ *United States Citizenship and Immigration Services*, Customs Service, Department of State Diplomatic Security Service or Naval Criminal Investigative Service, after completing ~~fifteen~~ *15* years of service or after reaching age ~~fifty-five~~ *55*; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia or any of the territories of the United States, after completing ~~fifteen~~ *15* years of service; or (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing ~~fifteen~~ *15* years of service. The clerk shall charge a fee of ~~ten dollars~~ *$10* for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed ~~thirty-five dollars~~ *$35* to cover the cost of conducting an investigation pursuant to this section. The ~~thirty-five-dollar~~ *$35* fee shall include any amount assessed by the Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the Federal Bureau of Investigation to the State Police with the fingerprints taken from the applicant. The State Police may charge a fee not to exceed ~~five dollars~~ *$5* to cover their costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed ~~fifty dollars~~ *$50*, with such fees to be paid in one sum to the person who accepts the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is accepted by the court as a complete application. The order issuing such permit shall be provided to the State Police and the law-enforcement agencies of the county or city. The State Police shall enter the permittee's name and description in the Virginia Criminal Information Network so that the permit's existence and current

status will be made known to law-enforcement personnel accessing the Network for investigative purposes.

L. Any person denied a permit to carry a concealed handgun under the provisions of this section may present a petition for review to the Court of Appeals. The petition for review shall be filed within ~~sixty~~ *60* days of the expiration of the time for requesting an ore tenus hearing pursuant to subsection I, or if an ore tenus hearing is requested, within ~~sixty~~ *60* days of the entry of the final order of the circuit court following the hearing. The petition shall be accompanied by a copy of the original papers filed in the circuit court, including a copy of the order of the circuit court denying the permit. Subject to the provisions of *subsection B of* § 17.1-410 ~~B~~, the decision of the Court of Appeals or judge shall be final. Notwithstanding any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs incurred by the person shall be paid by the Commonwealth.

M. For purposes of this section:

"Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed, made and intended to fire a projectile by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

N. As used in this article:

"Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated mechanism.

"Spring stick" means a spring-loaded metal stick activated by pushing a button which rapidly and forcefully telescopes the weapon to several times its original length.

O. The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.

P. A valid concealed handgun permit or license issued by another state shall be valid in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible ~~twenty-four~~ *24* hours a day, (ii) the requirements and qualifications of that state's law are adequate to prevent possession of a permit by persons who would be denied a permit in the Commonwealth under this section. The Superintendent of State Police shall (a) in consultation with the Office of the Attorney General determine whether states meet the requirements and qualifications of this section, (b) maintain a registry of such states on the Virginia Criminal Information Network (VCIN), and (c) make the registry available to law-enforcement officers for investigative purposes.

Q. A valid concealed handgun permit issued by the State of Maryland shall be valid in the Commonwealth provided, (i) the holder of the permit is licensed in the State of Maryland to perform duties substantially similar to those performed by Virginia branch pilots licensed pursuant to Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 and is performing such duties while in the Commonwealth, and (ii) the holder of the permit is 21 years of age or older.

R. The provisions of this statute or the application thereof to any person or circumstances which are held invalid shall not affect the validity of other provisions or applications of this statute which can be given effect without the invalid provisions or applications. This subsection is to reiterate § 1-17.1 and is not meant to add to or delete from that provision.

§ 29.1-338. Revocation of license; penalties.

If any person is found guilty of violating (i) any of the provisions of the hunting, trapping, or inland fish laws, any provisions of §§ *15.2-915.2, 15.2-1209.1,* 18.2-131 through 18.2-135 and §§ 18.2-285 through ~~18.2-287.1~~ *18.2-286.1*, or any regulations adopted by the Board pursuant thereto, a second time within three years of a previous conviction of violating any such law or regulation, or (ii) any provisions of law or ordinance governing the dumping of refuse, trash or other litter, while engaged in hunting, trapping or fishing, the license issued to such person shall be revoked by the court trying the case and that person shall not apply for a new license until twelve months succeeding the date of conviction. The court may also prohibit the convicted person from obtaining any license to hunt, fish, or trap in the Commonwealth for a period of one year to five years. If found hunting, trapping or fishing during this prohibited period, the person shall be guilty of a Class 2 misdemeanor. Licenses revoked shall be sent to the Director.

§ 48-16. Closure of nuisance involving illegal drug transactions.

Upon a conviction under § 18.2-258 and after due notice and opportunity to be heard on the part of any owner, lessor, or a lienholder not involved in the original offense, by a proceeding similar to that in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and upon proof of guilty knowledge, a court may order that such house, motor vehicle, aircraft, boat, vessel, or other premises, or any room or part thereof, be closed, but the court may, upon the owner or lessor giving bond in the penalty of not less than $500 and with security to be approved by the court, conditioned that the premises shall not be used for unlawful purposes, turn the same over to its owner or lessor; or proceeding may be had in

equity as provided in § 48-17.

B. The penalties provided in this section shall be in addition to any other penalty provided by law, including immediate termination of a rental agreement as provided in § 55-248.31.

C. In a civil or in rem proceeding under the provisions of this section judgment shall not be entered against the owner, lessor, or lienholder of property unless it is proved (i) that he knew of the unlawful use of the property and (ii) that he had the right, because of such unlawful use, to enter and repossess the property.

§ 48-17. Enjoining nuisances involving illegal drug transactions.

The attorney for the Commonwealth, or any citizen of the county, city, or town, where such a nuisance as is described in § 18.2-258 exists, may, in addition to any other remedies and punishment, maintain a suit in equity in the name of the Commonwealth to enjoin the same. The attorney for the Commonwealth shall not be required to prosecute any suit brought by a citizen under this section. In every case where the bill charges, on the knowledge or belief of the complainant, and is sworn to by two witnesses, that a nuisance exists as described in § 18.2-258, a temporary injunction may be granted as soon as the bill is presented to the court provided reasonable notice has been given. The injunction shall enjoin and restrain any owners, tenants, their agents, employees, and any other person from contributing to or maintaining the nuisance and may impose such other requirements as the court deems appropriate. If, after a hearing, the court finds that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it shall continue the injunction against such persons or premises for such period of time as it deems appropriate, with the right to dissolve the injunction upon a proper showing by the owner of the premises.

2. That §§ 18.2-105, 18.2-138.1, 18.2-287, 18.2-287.1, 18.2-340.32, 18.2-389, 18.2-432 and 18.2-433 of the Code of Virginia are repealed.

House Joint Resolution 196

ENROLLED

HOUSE JOINT RESOLUTION NO. 196

Requesting the Virginia State Crime Commission, in conjunction with the Virginia Sentencing Commission and the Office of the Executive Secretary of the Supreme Court, to develop an implementation plan for the revisions to Title 18.2. Report.

Agreed to by the House of Delegates, February 17, 2004
Agreed to by the Senate, March 9, 2004

WHEREAS, House Joint Resolution No. 687, passed by the 2001 General Assembly, directed the Virginia State Crime Commission to study the organization of and inconsistencies in Title 18.2 of the Code of Virginia and to review the proportionality of the criminal penalties and make recommendations for necessary amendments; and

WHEREAS, the Virginia State Crime Commission formed a subcommittee and workgroup to accomplish the assigned tasks and numerous meetings have been held with contributions by persons representing a variety of interests in the criminal justice field; and

WHEREAS, in fulfilling its directive the Virginia State Crime Commission has proposed a significant amount of legislation involving revisions to Title 18.2; and

WHEREAS, because of the widespread significance and volume of changes to Title 18.2 and the number of persons and entities affected by the revisions, which are proposed to become effective July 1, 2005, there is a great need for a coordinated effort to assist these persons and entities in implementing the changes; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission, in conjunction with the Virginia Criminal Sentencing Commission and the Office of the Executive Secretary of the Supreme Court, be requested to develop an implementation plan for the revisions to Title 18.2. The plan shall identify the persons, entities, procedures, sentencing guidelines and documents that will be affected by the revisions to Title 18.2 and shall identify the actions that need to be taken to implement the revisions. The plan shall include recommendations regarding training for judicial officers, attorneys, law-enforcement personnel and other persons in the criminal justice field.

The Virginia State Crime Commission shall coordinate the development of the plan.

Technical assistance shall be provided by the Virginia State Bar, the Commonwealth's Attorneys' Services Council, the Departments of Criminal Justice Services, State Police, Juvenile Justice and Corrections. All agencies of the Commonwealth shall provide assistance in developing the plan, upon request.

The Virginia State Crime Commission shall submit to the Division of Legislative Automated Systems an executive summary and the plan developed no later than the first day of the 2005 Regular Session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

House Joint Resolution 225

ENROLLED

HOUSE JOINT RESOLUTION NO. 225

Directing the Virginia State Crime Commission to conduct a statewide study of the operations of the offices of Commonwealth's Attorneys. Report.

Agreed to by the House of Delegates, February 17, 2004
Agreed to by the Senate, March 9, 2004

WHEREAS, Commonwealth's Attorneys are an integral part of Virginia's criminal justice system and as such they have a critical role in enhancing public safety in the Commonwealth; and

WHEREAS, the ability of Commonwealth's Attorneys to seek justice is dependent upon their ability to recruit, hire, train and retain sufficient qualified and experienced assistants to carry out the many responsibilities assigned to that office; and

WHEREAS, while the Commonwealth has made it a matter of public policy to establish full-time career prosecutors in the vast majority of jurisdictions, the Commonwealth has never conducted an in-depth examination of the staffing, training and support needs of Virginia's full-time prosecutors; and

WHEREAS, there currently exists a great disparity in the amount of local support provided by localities to the various Commonwealth's Attorneys Offices resulting in a disparity in the number and types of cases individual offices are able to prosecute; and

WHEREAS, there is an increased public demand that Commonwealth's Attorneys appear and prosecute serious misdemeanor cases such as driving under the influence and domestic violence; and

WHEREAS, Commonwealth's Attorney offices statewide are currently understaffed by 147 assistant attorney positions and 124 legal support positions based on the Compensation Board approved staffing standards; and

WHEREAS, criminal prosecution has become an increasingly complex and specialized profession as a result forensic advances, such as DNA and legal requirements occasioned by the increase of appellate decisions from the Court of Appeals and Supreme Court; and

WHEREAS, the consequence of prosecutors who are not well trained and current on legal and evidentiary changes is acquittal of guilty defendants or reversal and retrial of convictions at great public cost; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to conduct a statewide study of the operations of the offices of the Commonwealth's Attorneys. The Commission shall study the quality of prosecutorial representation and the efficiency by which prosecutorial services are provided. The study of quality of prosecutorial representation shall examine the impact, if any, of the existing workloads in the Commonwealth's Attorneys' offices, any disparity in workload per attorney, training and technical support for attorneys for the Commonwealth versus judicial and criminal justice system agencies, opportunities for continuing legal education specifically geared towards career prosecutors, and the Commonwealth's Attorneys' ability to hire and retain qualified prosecutors in their offices. Consideration of efficiency of service shall include a determination of a reasonable case load per attorney, the appropriate role of localities in providing support for Commonwealth's Attorneys, disparities among offices in their ability to provide quality prosecutorial representation to each locality, and considerations that would, if implemented, reduce pre-trial delay and thus minimize the costs of pre-trial incarceration.

The Virginia State Crime Commission shall submit to the Division of Legislative Automated Systems an executive summary and report of its progress in meeting the directives of this resolution no later than the first day of the 2006 Regular Session of the General Assembly. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

ENROLLED