VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.2-511, 18.2-18, 18.2-31, 18.2-51.1, 18.2-52.1, 18.2-60, 18.2-85, 19.2-61, 19.2-66, 19.2-70.2, 19.2-120, 19.2-215.1, 19.2-294, 19.2-386.1 through 19.2-386.5, 24.2-233, and 52-8.5 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 15.2-1716.1, and by adding in Chapter 4 of Title 18.2 an article numbered 2.2, consisting of sections numbered 18.2-46.4 through 18.2-46.10, relating to terrorism, etc.; penalties.

[H 1120]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 18.2-18, 18.2-31, 18.2-51.1, 18.2-52.1, 18.2-60, 18.2-85, 19.2-61, 19.2-66, 19.2-70.2, 19.2-120, 19.2-215.1, 19.2-294, 19.2-386.1 through 19.2-386.5, 24.2-233, and 52-8.5 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 15.2-1716.1 and by adding in Chapter 4 of Title 18.2 an article numbered 2.2, consisting of sections numbered 18.2-46.4 through 18.2-46.10, as follows:

§ 2.2-511. Criminal cases.

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, (vii) the practice of law without being duly authorized or licensed or the illegal practice of law, (viii) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), (ix) with the concurrence of the local attorney for the Commonwealth, violations of the Air Pollution Control Law (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), and the State Water Control Law (§ 62.1-44.2 et seq.), (x) with the concurrence of the local attorney for the Commonwealth, violations of Chapters 2 (§ 18.2-18 et seq.), 3 (§ 18.2-22 et seq.), and 10 (§ 18.2-434 et seq.) of Title 18.2, if such crimes relate to violations of law listed in clause (ix) of this subsection, ~~and~~ (xi) with the concurrence of the local attorney for the Commonwealth, criminal violations by Medicaid providers or their employees in the course of doing business, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may institute proceedings by information, presentment or indictment, as appropriate, and conduct the same, *and (xii) with the concurrence of the local attorney for the Commonwealth, violations of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2.*

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

B. The Attorney General shall, upon request of a person who was the victim of a crime and subject to such reasonable procedures as the Attorney General may require, ensure that such person is given notice of the filing and disposition of any appeal or habeas corpus proceeding involving the cases in which such person was a victim. For the purposes of this section, a victim is an individual who has suffered physical, psychological or economic harm as a direct result of the commission of a crime; a spouse, child, parent or legal guardian of a minor or incapacitated victim; or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages against the Commonwealth or any of its political subdivisions, the Attorney General or any of his employees or agents, any other officer, employee or agent of the Commonwealth or any of its political subdivisions, or any officer of the court.

§ 15.2-1716.1. Reimbursement of expenses incurred in responding to terrorism hoax incident.

Any locality may provide by ordinance that any person who is convicted of a violation of subsection

B or C of § 18.2-46.6, when his violation of such section is the proximate cause of any incident resulting in an appropriate emergency response, shall be liable in a separate civil action to the locality or to any volunteer rescue squad, or both, which may provide such emergency response for the reasonable expense thereof, in an amount not to exceed $1,000 in the aggregate for a particular incident occurring in such locality. In determining the "reasonable expense," a locality may bill a flat fee of $100 or a minute-by-minute accounting of the actual costs incurred. As used in this section, "appropriate emergency response" includes all costs of providing law-enforcement, fire-fighting, rescue, and emergency medical services. The provisions of this section shall not preempt or limit any remedy available to the Commonwealth, to the locality or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an incident not involving a terroristic hoax as set forth herein.

§ 18.2-18. How principals in second degree and accessories before the fact punished.

In the case of every felony, every principal in the second degree and every accessory before the fact may be indicted, tried, convicted and punished in all respects as if a principal in the first degree; provided, however, that except in the case of a killing for hire under the provisions of subdivision 2 of § 18.2-31 or a killing pursuant to the direction or order of one who is engaged in a continuing criminal enterprise under the provisions of subdivision 10 of § 18.2-31 *or a killing pursuant to the direction or order of one who is engaged in the commission of or attempted commission of an act of terrorism under the provisions of subdivision 13 of § 18.2-31*, an accessory before the fact or principal in the second degree to a capital murder shall be indicted, tried, convicted and punished as though the offense were murder in the first degree.

§ 18.2-31. Capital murder defined; punishment.

The following offenses shall constitute capital murder, punishable as a Class 1 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; ~~and~~

12. The willful, deliberate and premeditated killing of a person under the age of fourteen by a person age twenty-one 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.

Article 2.2.

Terrorism Offenses.

§ 18.2-46.4. Definitions.

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

"Act of terrorism" means an act of violence as defined in clause (i) of subdivision A of § 19.2-297.1 committed with the intent to (i) intimidate the civilian population at large; or (ii) influence the conduct or activities of the government of the United States, a state or locality through intimidation.

"Base offense" means an act of violence as defined in clause (i) of subdivision A of § 19.2-297.1 committed with the intent required to commit an act of terrorism.

"Weapon of terrorism" means any device or material that is designed, intended or used to cause death, bodily injury or serious bodily harm, through the release, dissemination, or impact of (i) poisonous chemicals; (ii) an infectious biological substance; or (iii) release of radiation or radioactivity.

§ 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 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 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 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 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.

§ 18.2-46.7. Act of bioterrorism against agricultural crops or animals; penalty.

Any person who maliciously destroys or devastates agricultural crops or agricultural animals having a value of $2,500 or more through the use of an infectious biological substance with the intent to (i) intimidate the civilian population or (ii) influence the conduct or activities of the government of the United States, a state or locality through intimidation, is guilty of a Class 3 felony.

For the purposes of this section "agricultural animal" means all livestock and poultry as defined in § 3.1-796.66 and "agricultural crop" means cultivated plants or produce, including grain, silage, forages, oilseeds, vegetables, fruits, nursery stock or turf grass.

§ 18.2-46.8. Venue.

Venue for any violation of this article may be had in the county or city where such crime is alleged to have occurred or where any act in furtherance of an act prohibited by this article was committed.

§ 18.2-46.9. 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 this article: 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 Title 19.2.

§ 18.2-46.10. Violation of sections within article separate and distinct offenses.

A violation of any section in this article shall constitute a separate and distinct offense. If the acts or activities violating any section within this article also violate another provision of law, a prosecution under any section in this article shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition of any penalties provided for thereby.

§ 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, ~~or~~ 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 ~~or~~, 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 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 ~~as defined hereinafter~~, ~~or~~ 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, ~~or~~ 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 ~~a~~ *"*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; 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 §§ 15.1-159.2 and 15.1-159.4 and auxiliary deputy sheriffs appointed pursuant to § 15.1-48.

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.

§ 18.2-52.1. Possession of infectious biological substances or radiological agents; penalties.

A. Any person who possesses, with the intent thereby to injure another, an infectious biological substance ~~capable of causing death~~ *or radiological agent* is guilty of a Class 5 felony.

B. Any person who *(i)* destroys or damages, or attempts to destroy or damage, any facility, equipment or material involved in the sale, manufacturing, storage or distribution of an infectious biological substance ~~capable of causing death~~ *or radiological agent,* with the intent to injure another by releasing the substance, *or (ii) manufactures, sells, gives, distributes or uses an infectious biological substance or radiological agent with the intent to injure another* is guilty of a Class 4 felony.

An "infectious biological substance" includes any bacteria, ~~virus~~ *viruses,* fungi, protozoa, or rickettsiae capable of causing death *or serious bodily injury.*

A "radiological agent" includes any substance able to release radiation at levels that are capable of causing death or serious bodily injury.

§ 18.2-60. Threats of death or bodily injury to a person or member of his family; threats to commit serious bodily harm to persons on school property; penalty.

A. 1. Any person who knowingly communicates, in a writing, including an electronically transmitted communication producing a visual or electronic message, a threat to kill or do bodily injury to a person, regarding that person or any member of his family, and the threat places such person in reasonable apprehension of death or bodily injury to himself or his family member, is guilty of a Class 6 felony. *However, any person who violates this subsection with the intent to commit an act of terrorism as defined in § 18.2-46.4 is guilty of a Class 5 felony.*

2. Any person who communicates a threat, in a writing, including an electronically transmitted communication producing a visual or electronic message, to kill or do bodily harm, (i) on the grounds or premises of any elementary, middle or secondary school property, (ii) at any elementary, middle or secondary school-sponsored event or (iii) on a school bus to any person or persons, regardless of whether the person who is the object of the threat actually receives the threat, and the threat would place the person who is the object of the threat in reasonable apprehension of death or bodily harm, is guilty of a Class 6 felony.

B. Any person who orally makes a threat to any employee of any elementary, middle or secondary school, while on a school bus, on school property or at a school-sponsored activity, to kill or to do bodily injury to such person, is guilty of a Class 1 misdemeanor.

A prosecution pursuant to this section may be either in the county, city or town in which the communication was made or received.

§ 18.2-85. Manufacture, possession, use, etc., of fire bombs or explosive materials or devices; penalties.

For the purpose of this section:

"Device" means any instrument, apparatus or contrivance, including its component parts, that is capable of producing or intended to produce an explosion but shall not include fireworks as defined in § 59.1-142.

"Explosive material" means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive agents or other ingredients in such proportions, quantities or packaging that an ignition by fire, friction, concussion, percussion, detonation or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, gunpowder, powders for blasting, high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents and smokeless powder.

"Fire bomb" means any container of a flammable material such as gasoline, kerosene, fuel oil, or other chemical compound, having a wick or other substance or device which, if set or ignited, is capable of igniting such flammable material or chemical compound but does not include a similar device commercially manufactured and used solely for the purpose of illumination or cooking.

"Hoax explosive device" means any device which by its design, construction, content or characteristics appears to be or to contain a bomb or other destructive device or explosive but which is~~,~~ ~~in fact,~~ an imitation of any such device or explosive.

Any person who (i) possesses materials with which fire bombs or explosive materials or devices can be made with the intent to manufacture fire bombs or explosive materials or devices or, (ii) manufactures, transports, distributes, possesses or uses a fire bomb or explosive materials or devices shall be guilty of a Class 5 felony. Any person who constructs, uses, places, sends, or causes to be sent any hoax explosive device so as to intentionally cause another person to believe that such device is a bomb or explosive shall be guilty of a Class 6 felony.

Nothing in this section shall prohibit the authorized manufacture, transportation, distribution, use or possession of any material, substance, or device by a member of the armed forces of the United States, fire fighters or law-enforcement officers, nor shall it prohibit the manufacture, transportation, distribution, use or possession of any material, substance or device to be used solely for scientific research, educational purposes or for any lawful purpose, subject to the provisions of §§ 27-97 and 27-97.2.

§ 19.2-61. Definitions.

As used in this chapter:

"Aggrieved person" means a person who was a party to any intercepted wire, electronic or oral communication or a person against whom the interception was directed;

"Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception;

"Communications common carrier" means any person engaged as a common carrier for hire in communication by wire or radio or in radio transmission of energy;

"Contents" when used with respect to any wire, electronic or oral communication, includes any information concerning the substance, purport or meaning of that communication;

"Electronic, mechanical or other device" means any device or apparatus ~~which~~ *that* can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of such service and used in the ordinary course of the subscriber's or user's business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law-enforcement officer in the ordinary course of his duties;

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal;

"Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system. The term does not include:

1. Any wire communication or oral communication as defined herein;

2. Any communication made through a tone-only paging device; ~~or~~

3. Any communication from an electronic or mechanical device which permits the tracking of the

movement of a person or object; *or*

4. Any electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

"Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"Electronic communication system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of *wire or* electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"Electronic storage" means any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof and any storage of such communication by an electronic communication service for purposes of backup protection of such communication;

"Intercept" means any aural or other means of acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device;

"Investigative or law-enforcement officer" means any officer of the United States or of a state or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

"Judge of competent jurisdiction" means a judge of any circuit court of the Commonwealth with general criminal jurisdiction;

"Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectations but does not include any electronic communication;

"Pen register" means a device *or process* ~~which~~ *that* records or decodes ~~electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached~~ *dialing, routing, addressing or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted; however, such information shall not include the contents of any communication*. The term does not include any device *or process* used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device *or process* used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of the provider's or customer's business;

"Person" means any employee or agent of the Commonwealth or a political subdivision thereof, and any individual, partnership, association, joint stock company, trust or corporation;

"Readily accessible to the general public" means, with respect to a radio communication, that such communication is not (i) scrambled or encrypted, (ii) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication; (iii) carried on a subcarrier or other signal subsidiary to a radio transmission, (iv) transmitted over a communication system provided by a communications common carrier, unless the communication is a tone-only paging system communication; or (v) transmitted on frequencies allocated under Part 25, subpart D, E, or F of Part 74, or Part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system;

"Trap and trace device" means a device *or process* ~~which~~ *that* captures the incoming electronic or other impulses ~~identifying~~ *that identify* the originating number ~~of an instrument or device from which a wire or electronic communication was transmitted;~~ ~~and~~ *or other dialing, routing, addressing and signaling information reasonably likely to identify the source of a wire or electronic communication; however, such information shall not include the contents of any communication;*

"User" means any person or entity who uses an electronic communication service and is duly authorized by the provider of such service to engage in such use;

"Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, including the use of such connection in a switching station, furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications ~~and includes electronic storage of such communication~~.

§ 19.2-66. When Attorney General or Chief Deputy Attorney General may apply for order authorizing interception of communications.

The Attorney General or Chief Deputy Attorney General, if the Attorney General so designates in writing, in any case where the Attorney General is authorized by law to prosecute or pursuant to a

request in his official capacity of an attorney for the Commonwealth in any city or county, may apply to a judge of competent jurisdiction for the jurisdiction where the proposed intercept is to be made for an order authorizing the interception of wire, electronic or oral communications by the Department of State Police, when such interception may reasonably be expected to provide evidence of the commission of a felonious offense of extortion, bribery, kidnapping, murder, any felony violation of § 18.2-248 or § 18.2-248.1, any felony violation of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, *any felony violation of Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2,* or any conspiracy to commit any of the foregoing offenses. The Attorney General or Chief Deputy Attorney General may apply for authorization for the observation or monitoring of the interception by a police department of a county or city or by law-enforcement officers of the United States. Such application shall be made, and such order may be granted, in conformity with the provisions of § 19.2-68. Application for installation of a mobile interception device may be made to and granted by any court of competent jurisdiction in the Commonwealth.

§ 19.2-70.2. Application for and issuance of order for a pen register or trap and trace device; assistance in installation and use.

A. An investigative or law-enforcement officer may make application for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device, in writing under oath or equivalent affirmation, to a court of competent jurisdiction. The application shall include:

1. The identity of the officer making the application and the identity of the law-enforcement agency conducting the investigation; and

2. A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

The application may include a request that the order require information, facilities and technical assistance necessary to accomplish the installation be furnished.

B. Upon application, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the investigative or law-enforcement officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

The order shall specify:

1. The identity, if known, of the person in whose name the telephone line *or other facility* to which the pen register or trap and trace device is to be attached *or applied* is listed or to whom the line *or other facility* is leased;

2. The identity, if known, of the person who is the subject of the criminal investigation;

3. ~~The number and, if known, the physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order~~ *The attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied*; and

4. A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

C. Installation and use of a pen register or a trap and trace device shall be authorized for a period not to exceed sixty days. Extensions of the order may be granted, but only upon application made and order issued in accordance with this section. The period of an extension shall not exceed sixty days.

D. An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

1. The order and application be sealed until otherwise ordered by the court;

2. Information, facilities and technical assistance necessary to accomplish the installation be furnished if requested in the application; and

3. The person owning or leasing the line *or other facility* to which the pen register or trap and trace device is attached~~, or who has been ordered by the court~~ *or applied, or who is obligated by the order* to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

E. Upon request of an investigative or a law-enforcement officer authorized by the court to install and use a pen register, a provider of wire or electronic communication service, a landlord, custodian or any other person so ordered by the court shall, as soon as practicable, furnish the officer with all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place.

F. Upon request of an investigative or law-enforcement officer authorized by the court to receive the

results of a trap and trace device under this section, a provider of wire or electronic communication service, a landlord, custodian or any other person so ordered by the court shall, as soon as practicable, install the device on the appropriate line and furnish the officer with all additional information, facilities and technical assistance, including installation and operation of the device, unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the investigative or law-enforcement officer designated by the court at reasonable intervals during regular business hours for the duration of the order. *Where the law-enforcement agency implementing an ex parte order under this subsection seeks to do so by installing and using its own pen register or trap and trace device on a packet-switched data network of a provider of electronic communication service to the public, the agency shall ensure that a record will be maintained that will identify (i) any officer or officers who installed the device and any officer or officers who accessed the device to obtain information from the network; (ii) the date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information; (iii) the configuration of the device at the time of its installation and any subsequent modification thereof; and (iv) any information that has been collected by the device. To the extent that the pen register or trap and trace device can be set automatically to record this information electronically, the record shall be maintained electronically throughout the installation and use of such device. The record maintained hereunder shall be provided ex parte and under seal of the court that entered the ex parte order authorizing the installation and use of the device within thirty days after termination of the order, including any extensions thereof.*

G. A provider of a wire or electronic communication service, a landlord, custodian or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for reasonable and actual expenses incurred in providing such facilities and assistance. The expenses shall be paid out of the criminal fund.

H. No cause of action shall lie in any court against a provider of a wire or electronic communication service, its officers, employees, agents or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order issued pursuant to this section. Good faith reliance on a court order, a legislative authorization or a statutory authorization is a complete defense against any civil or criminal action based upon a violation of this chapter.

§ 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 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 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; ~~or~~

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.

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

The functions of a multijurisdiction grand jury are:

1. To investigate any condition ~~which~~ *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 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; ~~and~~

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 ~~which~~ *that* a multijurisdiction grand jury is otherwise authorized to undertake and to investigate any condition ~~which~~ *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.

§ 19.2-294. Offense against two or more statutes or ordinances.

If the same act be a violation of two or more statutes, or of two or more ordinances, or of one or more statutes and also one or more ordinances, conviction under one of such statutes or ordinances shall be a bar to a prosecution or proceeding under the other or others. Furthermore, if the same act be a violation of both a state and a federal statute a prosecution under the federal statute shall be a bar to a prosecution under the state statute. *The provisions of this section shall not apply to any offense involving an act of terrorism as defined in § 18.2-46.4.*

For purposes of this section, a prosecution under a federal statute shall be deemed to be commenced with the return of an indictment by a grand jury or the filing of an information by a United States attorney.

§ 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 or §* 18.2-249 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 or* § 18.2-249 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 or* § 18.2-249, 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 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 or* § 18.2-249 prior to filing an information, then an information against that property shall be filed within ninety 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 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,* 18.2-249 or ~~under~~, § 19.2-386.2, 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 or* § 18.2-249 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.

§ 24.2-233. Removal of elected and certain appointed officers by courts.

Upon petition, a circuit court may remove from office any elected officer or officer who has been appointed to fill an elective office, residing within the jurisdiction of the court:

1. For neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office, or

2. Upon conviction of a misdemeanor pursuant to Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and after all rights of appeal have terminated involving the:

a. Manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or distribute a controlled substance or marijuana, or

b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug paraphernalia, or

c. Possession of any controlled substance or marijuana, and such conviction under a, b, or c has a material adverse effect upon the conduct of such office, or

3. Upon conviction, and after all rights of appeal have terminated, of a misdemeanor involving a "~~terrorist~~ ~~act~~ *hate crime*" as that term is defined in § 52-8.5 when the conviction has a material adverse effect upon the conduct of such office.

The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to ten percent of the total number of votes cast at the last election for the office ~~which~~ *that* the officer holds.

Any person removed from office under the provisions of subdivision 2 or 3 may not be subsequently subject to the provisions of this section for the same criminal offense.

§ 52-8.5. Reporting hate crimes.

A. The Superintendent shall establish and maintain within the Department of State Police a central repository for the collection and analysis of information regarding ~~terroristic~~ ~~acts~~ *hate crimes* and groups and individuals carrying out such acts.

B. State, county and municipal law-enforcement agencies shall report to the Department all ~~terroristic~~ ~~acts~~ *hate crimes* occurring in their jurisdictions in a form, time and manner prescribed by the Superintendent. Such reports shall not be open to public inspection except insofar as the Superintendent shall permit.

C. For purposes of this section, "~~terroristic~~ ~~act~~ *hate crime*" means (i) a criminal act committed against a person or his property with the specific intent of instilling fear or intimidation in the individual against whom the act is perpetrated because of race, religion or ethnic origin or ~~which~~ *that* is committed for the purpose of restraining that person from exercising his rights under the Constitution or laws of this Commonwealth or of the United States, (ii) any illegal act directed against any persons or their property because of those persons' race, religion or national origin, and (iii) all other incidents, as determined by law-enforcement authorities, intended to intimidate or harass any individual or group because of race, religion or national origin.

2. 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 cannot be determined for periods of imprisonment in state adult correctional facilities and is $0 for periods of commitment to the custody of the Department of Juvenile Justice.