

025269253

**SENATE BILL NO. 514**

Offered January 9, 2002

Prefiled January 9, 2002

*A BILL to amend and reenact §§ 18.2-18, 18.2-31, 18.2-51.1, 18.2-53.1, 18.2-54.1, 18.2-85, 18.2-152.4, 19.2-11.01, 19.2-61, 19.2-66, 19.2-70.2, 19.2-215.1, and 19.2-386.1 through 19.2-386.5 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 18.2 an article numbered 2.2, consisting of sections numbered 18.2-46.4 through 18.2-46.9, relating to terrorism, etc.; penalties.*

Patrons—Stolle and Rerras

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-18, 18.2-31, 18.2-51.1, 18.2-53.1, 18.2-54.1, 18.2-85, 18.2-152.4, 19.2-11.01, 19.2-61, 19.2-66, 19.2-70.2, 19.2-215.1, and 19.2-386.1 through 19.2-386.5 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 4 of Title 18.2 an article numbered 2.2, consisting of sections numbered 18.2-46.4 through 18.2-46.9, as follows:**

§ 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

INTRODUCED

SB514

59 age twenty-one or older.; and

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

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

65 Article 2.2.

66 Terrorism Offenses.

67 § 18.2-46.4. Definitions.

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

69 "Act of terrorism" means a violation of any felony criminal law of the Commonwealth committed  
70 with the intent to (i) intimidate or coerce a civilian population; or (ii) influence the policy, conduct or  
71 activities of the government of the United States, a state or locality through intimidation or coercion.

72 "Base offense" means the violation of felony criminal law of the Commonwealth committed with the  
73 intent required to commit an act of terrorism.

74 "Terrorist organization" means any ongoing organization, association or group of three or more  
75 persons, whether formal or informal, that has as one of its primary objectives or activities, planning,  
76 conspiring or combining to commit an act of terrorism.

77 "Weapon of terrorism" means (i) any weapon that is designed or intended to cause death or serious  
78 bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals; (ii) any  
79 weapon involving a disease organism; (iii) any weapon that is designed to release radiation or  
80 radioactivity at a level dangerous to human life; or (iv) any device or material that by its design,  
81 construction, content or characteristics purports to be, appears to be or contains a weapon described in  
82 clauses (i), (ii) or (iii) of this subsection but that is, in fact, an imitation of any such weapon.

83 § 18.2-46.5. Acts of terrorism prohibited; penalty.

84 A. Any person who commits, conspires to commit, or aids and abets the commission of an act of  
85 terrorism, as defined in § 18.2-46.4, is guilty of a Class 2 felony if the base offense of such act of  
86 terrorism may be punished by death, life imprisonment, or a term of imprisonment of twenty years or  
87 more.

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

92 C. Violation of this section shall constitute a separate and distinct offense. If the acts or activities  
93 violating this section also violate another provision of law, a prosecution under this section shall not  
94 prohibit or bar any prosecution or proceeding under such other provision or the imposition of any  
95 penalties provided for thereby.

96 § 18.2-46.6. Membership or participation in a terrorist organization; penalty.

97 Any person who is a member of, or otherwise actively participates with, a terrorist organization is  
98 guilty of a Class 3 felony.

99 § 18.2-46.7. Possession, manufacture, distribution, etc. of weapon of terrorism prohibited; penalty.

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

103 B. Any person who by any means communicates to another a threat to disseminate, release, detonate  
104 or otherwise use a weapon of terrorism shall be guilty of a Class 3 felony. Venue for any violation of  
105 this subsection may be had in the county or city where such threat is produced or in any county or city  
106 where such threat is received.

107 § 18.2-46.8. Venue.

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

110 § 18.2-46.9. Seizure of property used in connection with or derived from terrorism.

111 A. The following property shall be subject to lawful seizure by any law-enforcement officer charged  
112 with enforcing the provisions of this article: (i) all moneys or other property, real or personal, together  
113 with any interest or profits derived from the investment of such money or (ii) other property traceable to  
114 an act of terrorism as defined in § 18.2-46.4.

115 B. All seizures and forfeitures under this section shall be governed by the procedures contained in  
116 Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

117 § 18.2-51.1. Malicious bodily injury to law-enforcement officers, or firefighters, search and rescue  
118 personnel, and emergency medical service providers; penalty; lesser included offense.

119 If any person maliciously causes bodily injury to another by any means including the means set out  
120 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, 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 person, whether paid or acting in a volunteer capacity, who participates in an effort organized in response to an emergency, by law-enforcement or fire-fighting officials, to locate and recover persons injured or killed as a result of the event giving rise to the emergency.*

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; penalty.

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 *or while committing a violation of Article 2.2 (§ 18.2-46.4 et seq.) of this chapter.* 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; penalty.

If any person 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 guilty of a Class 3 felony. *A violation of this section in the commission of an act of terrorism, as defined in § 18.2-46.4, shall be a Class 2 felony.*

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

For the purpose of this section:

"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.

"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 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.

"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.

"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 54 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 65 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.

§ 18.2-152.4. Computer trespass; penalty.

A. It shall be unlawful for any person to use a computer or computer network without authority and with the intent to:

1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network;

2. Cause a computer to malfunction, regardless of how long the malfunction persists;

3. Alter or erase any computer data, computer programs, or computer software;

4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;

5. Cause physical injury to the property of another;

6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network; or

7. Falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

B. It shall be unlawful for any person knowingly to sell, give or otherwise distribute or possess with the intent to sell, give or distribute software which (i) is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information; (ii) has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or (iii) is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

C. Any person who violates this section shall be guilty of computer trespass, which offense shall be punishable as a Class 3 misdemeanor. If there is damage to the property of another valued at \$2,500 or more caused by such person's reckless disregard for the consequences of his act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is damage to the property of another valued at \$2,500 or more caused by such person's malicious act in violation of this section, the offense shall be punishable as a Class 6 felony. *A violation of this section in the commission of an act of terrorism, as defined in § 18.2-46.4, is a Class 3 felony.*

D. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software or to create any liability by reason of terms or conditions adopted by, or technical measures implemented by, a Virginia-based electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of this article.

§ 19.2-11.01. Crime victim and witness rights.

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws

of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by this chapter.

Following a crime, law-enforcement personnel shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims.

#### 1. Victim and witness protection.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation.

#### 2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of this title, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

#### 3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

c. Victims shall receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case.

d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses and telephone numbers in writing.

e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims.

#### 4. Victim input.

a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding pursuant to the provisions of § 19.2-265.01.

c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the offense.

d. In a felony case, the attorney for the Commonwealth, upon the victim's written request, shall consult with the victim either verbally or in writing (i) to inform the victim of the contents of a

proposed plea agreement and (ii) to obtain the victim's views concerning plea negotiations. However, nothing in this section shall limit the ability of the attorney for the Commonwealth to exercise his discretion on behalf of the citizens of the Commonwealth in the disposition of any criminal case. The court shall not accept the plea agreement unless it finds that, except for good cause shown, the Commonwealth has complied with clauses (i) and (ii). Good cause shown shall include, but not be limited to, the unavailability of the victim due to incarceration, hospitalization, failure to appear at trial when subpoenaed, or change of address without notice.

Upon the victim's written request, the victim shall be notified in accordance with subdivision A 3 b of any proceeding in which the plea agreement will be tendered to the court.

The responsibility to consult with the victim under this subdivision shall not confer upon the defendant any substantive or procedural rights and shall not affect the validity of any plea entered by the defendant.

5. Courtroom assistance.

a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the conduct of the criminal proceeding.

b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in accordance with §§ 19.2-164 and 19.2-164.1.

c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed preliminary hearing in accordance with § 18.2-67.8 and, if a victim was fourteen years of age or younger on the date of the offense and is sixteen or under at the time of the trial, or a witness to the offense is fourteen years of age or younger at the time of the trial, that two-way closed-circuit television may be used in the taking of testimony in accordance with § 18.2-67.9.

B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery in violation of §§ 18.2-57, 18.2-57.1 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, maiming or driving while intoxicated in violation of § 18.2-51.4 ~~or~~, § 18.2-266, *or a violation of Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2*, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person who is a minor, or (iv) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

C. Officials and employees of the judiciary, including court services units, law-enforcement agencies, the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness assistance program. Each agency, officer or employee who has a responsibility or responsibilities to victims under this chapter or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that victims and witnesses receive such information and services to which they may be entitled under applicable law, provided that no liability or cause of action shall arise from the failure to make such efforts or from the failure of such victims or witnesses to receive any such information or services.

§ 19.2-61. Definitions.

As used in this chapter:

"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;

"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;

"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;

"Electronic, mechanical or other device" means any device or apparatus which 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;

"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;

"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;

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

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

"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;

"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;

"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;

"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;

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

"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;

"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;

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

~~"Pen register" means a device which 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. 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 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;~~

~~"Trap and trace device" means a device or process which captures the incoming electronic or other impulses identifying 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;~~

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

§ 19.2-66. When Attorney General or Chief Deputy Attorney General may apply for order

428 authorizing interception of communications.

429 A. The Attorney General or Chief Deputy Attorney General, if the Attorney General so designates in  
430 writing, in any case where the Attorney General is authorized by law to prosecute or pursuant to a  
431 request in his official capacity of an attorney for the Commonwealth in any city or county, may apply to  
432 a judge of competent jurisdiction for the jurisdiction where the proposed intercept is to be made for an  
433 order authorizing the interception of wire, electronic or oral communications by the Department of State  
434 Police, when such interception may reasonably be expected to provide evidence of the commission of a  
435 felonious offense of extortion, bribery, kidnapping, murder, any felony violation of § 18.2-248 or  
436 § 18.2-248.1, any felony violation of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, *any violation of*  
437 *Article 2.2 (§ 18.2-46.4 et seq.) of Title 18.2*, or any conspiracy to commit any of the foregoing  
438 offenses. The Attorney General or Chief Deputy Attorney General may apply for authorization for the  
439 observation or monitoring of the interception by a police department of a county or city or by  
440 law-enforcement officers of the United States. Such application shall be made, and such order may be  
441 granted, in conformity with the provisions of § 19.2-68. Application for installation of a mobile  
442 interception device may be made to and granted by any court of competent jurisdiction in the  
443 Commonwealth.

444 § 19.2-70.2. Application for and issuance of order for a pen register or trap and trace device;  
445 assistance in installation and use.

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

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

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

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

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

460 The order shall specify:

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

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

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

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

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

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

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

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

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

485 E. Upon request of an investigative or a law-enforcement officer authorized by the court to install  
486 and use a pen register, a provider of wire or electronic communication service, a landlord, custodian or  
487 any other person so ordered by the court shall, as soon as practicable, furnish the officer with all  
488 information, facilities, and technical assistance necessary to accomplish the installation of the pen  
489 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.

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.

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

The functions of a multijurisdiction grand jury are:

1. To investigate any condition which 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 a multijurisdiction grand jury is otherwise authorized to undertake and to investigate any condition which 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.

§ 19.2-386.1. Commencing an action of forfeiture.

An action against any property subject to seizure under the provisions of § 18.2-249 or § 18.2-46.9 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 § 18.2-249 *or* § 18.2-46.9 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 § 18.2-249 *or* § 18.2-46.9, 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 § 18.2-249 *or* § 18.2-46.9, 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 § 18.2-249 ~~or under~~, § 19.2-386.2, *or* § 18.2-46.9 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 § 18.2-249 *or* § 18.2-46.9 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

613 § 19.2-386.8.

614 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
615 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot  
616 be determined for periods of imprisonment in state adult correctional facilities and is \$0 for  
617 periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

SB514