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SENATE BILL NO. 514

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance

on February 6, 2002)

(Patrons Prior to Substitute—Senators Stolle [SB 223, SB 315], Rerras [SB 421, 422])

A BILL to amend and reenact §§ 2.2-511, 18.2-18, 18.2-31, 18.2-51.1, 18.2-52.1, 18.2-85, 19.2-61, 19.2-66, 19.2-68, 19.2-70.2, 19.2-120, 19.2-215.1, 19.2-294 and 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 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.

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, 18.2-85, 19.2-61, 19.2-66, 19.2-68, 19.2-70.2, 19.2-120, 19.2-215.1, 19.2-294 and 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 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.

§ 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; 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 that is designed, intended or used to cause death or bodily injury, 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, 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. Threats to commit an act of terrorism; penalty.

Any person who by any means communicates to another a threat to commit an act of terrorism shall be guilty of a Class 5 felony. Venue for a violation of this section may be had in the county or city where such threat is produced or in any county or city where such threat is received.

§ 18.2-46.7. 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, shall be 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" shall be 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 shall be guilty of a Class 6 felony.

§ 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; penalties.

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

B. Any person who 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 *or radiological agent,* capable of causing death, with the intent to injure another by releasing the substance, 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.

§ 18.2-85. 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 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:

"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~~*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;

"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 *or any judge publicly designated by the Chief Justice of the Supreme Court of Virginia pursuant to subsection B of § 19.2-66;*

"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; *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;

"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 *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;

"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;*

"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 authorizing interception of communications.

A. 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 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.

B. The Chief Justice of the Supreme Court of Virginia shall designate five circuit court judges, three of whom reside within twenty miles of the city of Richmond, who shall have jurisdiction to consider applications for and grant orders authorizing the interception of wire, electronic or oral communications anywhere within the Commonwealth, when such interception may reasonably be expected to provide evidence of the commission of a felonious offense of Article 2.2 (§ 18.2-46.4 et seq.) of Title 18.2, or a conspiracy to commit a violation of such article. Applications made under this subsection shall conform to the requirements of §19.2-68.

§ 19.2-68. Application for and issuance of order authorizing interception; contents of order; recording and retention of intercepted communications, applications and orders; notice to parties; introduction in evidence of information obtained.

A. Each application for an order authorizing the interception of a wire, electronic or oral communication shall be made in writing upon oath or affirmation to the appropriate judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall be verified by the Attorney General to the best of his knowledge and belief and shall include the following information:

1. The identity of the attorney for the Commonwealth and law-enforcement officer who requested the Attorney General to apply for such order;

2. A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being or is about to be committed, (ii) except as provided in subsection I, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

3. A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

4. A statement of the period of time for which the interception is required to be maintained. If the

nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

5. A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept wire, electronic or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application;

6. Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results; and

7. If authorization is requested for observation or monitoring by a police department of a county or city or by law-enforcement officers of the United States, a statement containing the name of the police department or United States agency, and an explanation of the reasons such observation or monitoring is necessary.

The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

B. Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, electronic or oral communications within the territorial jurisdiction of the court in which the judge is sitting, and outside that jurisdiction but within the Commonwealth in the case of a mobile interception device authorized by a court of competent jurisdiction within such jurisdiction, if the judge determines on the basis of the facts submitted by the applicant that:

1. There is probable cause for belief that an individual is committing, has committed or is about to commit an offense enumerated in § 19.2-66 of this chapter;

2. There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

3. Normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous; and interception under this chapter is the only alternative investigative procedure available;

4. Except as provided in subsection I, there is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person;

5. A wire, electronic or oral communication shall be deemed to be intercepted pursuant to subsection B of this section in the jurisdiction where the communication is actually intercepted and the monitoring of such intercepted communication may be at any location within the Commonwealth of Virginia. For the purposes of this section, the definition of "intercept" means the acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

C. Each order authorizing the interception of any wire, electronic or oral communication shall specify:

1. The identity of the person, if known, whose communications are to be intercepted;

2. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

3. A particular description of the type of communication sought to be intercepted, and a statement of the particular offense enumerated in § 19.2-66 to which it relates;

4. That such interception is to be conducted only by the Department of State Police;

5. If observation or monitoring by the police department of a county or city or by law-enforcement officers of the United States is authorized, only that police department or agency shall observe or monitor the interception; and

6. The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a provider of wire or electronic communications service, landlord, custodian or other person shall furnish the Department of State Police forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian or person is providing the person whose communications are to be intercepted. Any provider of wire or electronic communications service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the Commonwealth for reasonable and actual expenses incurred in providing such facilities or assistance, to be paid out of the criminal fund.

D. No order entered under this section may authorize the interception of any wire, electronic or oral

communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days which period begins to run on the earlier of the day on which the investigative or law-enforcement officer begins to conduct an interception under the order or ten days after the date of entry of the order. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection A of this section and the court's making the findings required by subsection B of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception.

E. Whenever an order authorizing interception is entered pursuant to this chapter, the order shall require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge shall require.

F. 1. The contents of any wire, electronic or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. Should it not be possible to record the intercepted communication, a detailed resume of such communication shall forthwith be reduced to writing and filed with the court. The recording of the contents of any wire, electronic or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations and shall not be duplicated except upon order of the court as hereafter provided. Immediately upon the expiration of the period of the order, or extensions thereof, such recording or detailed resume shall be made available to the judge issuing such order and sealed under his directions. Custody of any recordings or detailed resumes shall be vested with the court and shall not be destroyed for a period of ten years from the date of the order and then only by direction of the court; provided, however, should any interception fail to reveal any information related to the offense or offenses for which it was authorized, such recording or resume shall be destroyed after the expiration of sixty days after the notice required by subdivision 4 of this subsection is served. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections A and B of § 19.2-67 for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, electronic or oral communication or evidence derived therefrom under subsection C of § 19.2-67.

2. Applications made and orders granted or denied under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

3. Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying court.

4. Within a reasonable time but not later than ninety days after the filing of an application for an order of authorization which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of:

(a) The fact of the entry of the order or the application;

(b) The date of the entry and the period of authorized interception, or the denial of the application;

(c) The fact that during the period wire, electronic or oral communications were or were not intercepted; and

(d) The fact that unless he files a motion with the court within sixty days after the service of notice upon him, the recordation or resume may be destroyed in accordance with subdivision 1 of this subsection.

The judge, upon the filing of a motion, shall make available to such person or his counsel for inspection the intercepted communications, applications and orders. The serving of the inventory required by this subsection may be postponed for additional periods, not to exceed thirty days each, upon the ex parte showing of good cause to a judge of competent jurisdiction.

G. The contents of any intercepted wire, electronic or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in a state court unless each party to the communication and to such proceeding, not less than

ten days before the trial, hearing or proceeding, has been furnished with a copy of the court order, accompanying application under which the interception was authorized and the contents of any intercepted wire, electronic or oral communication that is to be used in any trial, hearing or other proceeding in a state court. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information; provided that such information in any event shall be given prior to the day of the trial, and the inability to comply with such ten-day period shall be grounds for the granting of a continuance to either party.

The judge who considers an application for an interception under this chapter, whether issuing or denying the order, shall be disqualified from presiding at any trial resulting from or in any manner connected with such interception, regardless of whether the evidence acquired thereby is used in such trial.

H. Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of the Commonwealth, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, electronic or oral communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted, or was not intercepted in compliance with this chapter; or

2. The order of the authorization or approval under which it was intercepted is insufficient on its face; or

3. The interception was not made in conformity with the order of authorization or approval; or

4. The interception is not admissible into evidence in any trial, proceeding or hearing in a state court under the applicable rules of evidence.

Such motion shall be made before the trial, hearing or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted pursuant to subdivision 1, 2 or 3 of this subsection, the contents of the intercepted wire, electronic or oral communication or evidence derived therefrom shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, shall make available to the aggrieved person, or his counsel, for inspection the intercepted communication.

I. The requirements of subdivision 2 of subsection A and subdivision 4 of subsection B of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

1. In the case of an application with respect to the interception of an oral communication:

(a) The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(b) The judge finds that such specification is not practical; or

2. In the case of an application with respect to a wire or electronic communication:

(a) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(b) the judge finds that such purpose has been adequately shown.

The interception of a communication under an order issued pursuant to this subsection shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order issued pursuant to this subdivision 2 may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the Attorney General, shall decide the motion expeditiously.

J. Where the order authorizing the intercept is entered by a judge acting pursuant to subsection B of § 19.2-66, the judge shall, upon the request by an attorney for the Commonwealth who represents that the contents of an intercepted communication are required for use in a criminal proceeding in a jurisdiction other than that in which the record of the intercept is maintained, enter an order directing that the record of the intercept proceedings, including the recording or detailed resume of the intercepted communications sealed by the judge pursuant to subdivision 1 of subsection F of § 19.2-68, be transferred to the clerk of the circuit court of the appropriate jurisdiction for use in the criminal proceedings in that jurisdiction. The clerk in the jurisdiction that receives the record of the intercept shall not allow any access to the record without an order from a judge of the circuit court in his jurisdiction.

§ 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 to 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 Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2.

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.