

030616627

**HOUSE BILL NO. 1999**

Offered January 8, 2003

Prefiled January 7, 2003

*A BILL to amend and reenact §§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-275.7, 17.1-805, 18.2-61, 18.2-67.1, 18.2-67.2, 19.2-218.1, 19.2-218.2, 19.2-298.1, 19.2-298.2, 19.2-298.3, 19.2-299, 19.2-303.4, 19.2-335, and 19.2-336 of the Code of Virginia, and to repeal § 18.2-67.2:1 of the Code of Virginia, relating to certain sexual crimes; penalty.*

Patrons—Bell, Albo and Athey

Referred to Committee for Courts of Justice

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

**1. That §§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-275.7, 17.1-805, 18.2-61, 18.2-67.1, 18.2-67.2, 19.2-218.1, 19.2-218.2, 19.2-298.1, 19.2-298.2, 19.2-298.3, 19.2-299, 19.2-303.4, 19.2-335, and 19.2-336 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-69.48:1. (Effective July 1, 2003) Fixed fee for misdemeanors, traffic infractions and other violations in district court; additional fees to be added.

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

In addition to any other fee prescribed by this section, a fee of ~~ten dollars~~ \$10 shall be taxed as costs whenever a defendant fails to appear, unless, after a hearing requested by such person, good cause is shown for such failure to appear. No defendant with multiple charges arising from a single incident shall be taxed the fee provided in this section more than once for a single appearance or trial in absence related to that incident. A defendant with charges which arise from separate incidents shall be taxed a fee for each incident even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

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

B. In misdemeanors tried in district court, except for those proceedings provided for in subsection C, there shall be assessed as court costs a fixed fee of ~~fifty-seven dollars~~ \$57. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.596490);
2. Virginia Crime Victim-Witness Fund (.052632);
3. Regional Criminal Justice Training Academies Fund (.017544);
4. Courthouse Construction/Maintenance Fund (.035088);
5. Criminal Injuries Compensation Fund (.105263);
6. Intensified Drug Enforcement Jurisdiction Fund (.035088);
7. Sentencing/supervision fee (General Fund) (.140351); and
8. Sentencing/supervision fee (local share) (.017544).

C. In criminal actions and proceedings in district court for a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, there shall be assessed as court costs a fixed fee of \$132. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.257576);
2. Virginia Crime Victim-Witness Fund (.022727);
3. Regional Criminal Justice Training Academies Fund (.007576);
4. Courthouse Construction/Maintenance Fund (.015152);
5. Criminal Injuries Compensation Fund (.045455);
6. Intensified Drug Enforcement Jurisdiction Fund (.015152);
7. Drug Offender Assessment Fund (.568182);
8. Forensic laboratory fee and sentencing/supervision fee (General Fund) (.060605); and
9. Sentencing/supervision fee (local share) (.007575).

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HB1999

59 D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of  
60 ~~forty-two dollars~~ \$42. The amount collected, in whole or in part, for the fixed fee shall be apportioned,  
61 as provided by law, to the following funds in the fractional amounts designated:

- 62 1. Processing fee (General Fund) (.809523);
- 63 2. Virginia Crime Victim-Witness Fund (.071429);
- 64 3. Regional Criminal Justice Training Academies Fund (.023810);
- 65 4. Courthouse Construction/Maintenance Fund (.047619); and
- 66 5. Intensified Drug Enforcement Jurisdiction Fund (.047619).

67 § 17.1-275.1. (Effective July 1, 2003) Fixed felony fee.

68 Upon conviction of any and each felony charge or upon a deferred disposition of proceedings in  
69 circuit court in the case of any and each felony disposition deferred pursuant to the terms and conditions  
70 of §§ 16.1-278.8, 16.1-278.9, ~~18.2-61~~, ~~18.2-67.1~~, ~~18.2-67.2-1~~, 18.2-251, or § 19.2-303.2, there shall be  
71 assessed as court costs a fee of \$373, to be known as the fixed felony fee.

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

- 74 1. Sentencing/supervision fee (General Fund) (.4493566);
- 75 2. Sentencing/supervision fee (local share) (.0236729);
- 76 3. Forensic science fund (.1038874);
- 77 4. Court reporter fund (.0891958);
- 78 5. Witness expenses/expert witness fund (.0053619);
- 79 6. Virginia Crime Victim-Witness Fund (.0080428);
- 80 7. Intensified Drug Enforcement Jurisdiction Fund (.0053619);
- 81 8. Criminal Injuries Compensation Fund(.0804289);
- 82 9. Commonwealth's attorney fund (state share) (.0201072)
- 83 10. Commonwealth's attorney fund (local share) (.0201072);
- 84 11. Regional Criminal Justice Academy Training Fund (.0026809);
- 85 12. Warrant fee (.0321715);
- 86 13. Courthouse construction/maintenance fund (.0053619);
- 87 14. Clerk of the circuit court (.0872391);
- 88 15. Blood, saliva or tissue sample withdrawal (.0335120); and fee (General Fund)
- 89 16. Blood, saliva or tissue sample withdrawal fee (local share) (.0335120).

90 § 17.1-275.2. (Effective July 1, 2003) Fixed fee for felony reduced to misdemeanor.

91 In circuit court, upon the conviction of a person of any and each misdemeanor reduced from a felony  
92 charge, or upon a deferred disposition of proceedings in the case of any and each misdemeanor reduced  
93 from a felony charge and deferred pursuant to the terms and conditions of §§ 4.1-305, 16.1-278.8,  
94 16.1-278.9, 18.2-57.3, ~~18.2-67.2-1~~, or § 19.2-303.2, there shall be assessed as court costs a fee of \$200,  
95 to be known as the fixed fee for felony reduced to misdemeanor. However, this section shall not apply  
96 to those proceedings provided for in § 17.1-275.8.

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

- 99 1. Sentencing/supervision fee (General Fund) (.17315);
- 100 2. Sentencing/supervision fee (local share) (.01925);
- 101 3. Forensic science fund (.19375);
- 102 4. Court reporter fund (.16635);
- 103 5. Witness expenses/expert witness fund (.01000)
- 104 6. Virginia Crime Victim-Witness Fund (.01500);
- 105 7. Intensified Drug Enforcement Jurisdiction Fund (.01000);
- 106 8. Criminal Injuries Compensation Fund (.10000);
- 107 9. Commonwealth's attorney fund (state share) (.03750);
- 108 10. Commonwealth's attorney fund (local share) (.03750);
- 109 11. Regional Criminal Justice Academy Training Fund (.00500);
- 110 12. Warrant fee (.06000);
- 111 13. Courthouse construction/maintenance fund (.01000); and
- 112 14. Clerk of the circuit court (.16250).

113 § 17.1-275.7. (Effective July 1, 2003) Fixed misdemeanor fee.

114 In circuit court, upon (i) conviction of any and each misdemeanor, not originally charged as a felony,  
115 (ii) a deferred disposition of proceedings in the case of any and each misdemeanor not originally  
116 charged as a felony and deferred pursuant to the terms and conditions of §§ 4.1-305, 16.1-278.8,  
117 16.1-278.9, 18.2-57.3, ~~18.2-67.2-1~~, or § 19.2-303.2, or (iii) any and each conviction of a traffic infraction  
118 or referral to a driver improvement clinic or traffic school in lieu of a finding of guilt for a traffic  
119 infraction, there shall be assessed as court costs a fee of ~~sixty-eight dollars~~ \$68, to be known as the fixed  
120 misdemeanor fee. However, this section shall not apply to those proceedings provided for in

§ 17.1-275.8. This fee shall be in addition to any fee assessed in the district court.

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

1. Sentencing/supervision fee (General Fund) (.0036764);
2. Sentencing/supervision fee (local share) (.0110295);
3. Witness expenses/expert witness fee (General Fund) (.0294118);
4. Virginia Crime Victim-Witness Fund (.0441176);
5. Intensified Drug Enforcement Jurisdiction Fund (.0294118);
6. Criminal Injuries Compensation Fund (.2941176);
7. Commonwealth's Attorney Fund (state share) (.0367648);
8. Commonwealth's Attorney Fund (local share) (.0367648);
9. Regional Criminal Justice Academy Training Fund (.0147058);
10. Warrant fee, as prescribed by § 17.1-272 (.1764705);
11. Courthouse Construction/Maintenance Fund (.0294118); and
12. Clerk of the circuit court (.2941176).

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

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

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

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

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

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

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

C. For purposes of this chapter, violent felony offenses shall include any violation of §§ 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or § 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or § 18.2-41; any Class 5 felony violation of § 18.2-47; any felony violation of §§ 18.2-48,

182 18.2-48.1 or § 18.2-49; any violation of §§ 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-52,  
183 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or § 18.2-55; any felony violation of § 18.2-57.2; any  
184 violation of § 18.2-58 or § 18.2-58.1; any felony violation of § 18.2-60.1 or § 18.2-60.3; any violation of  
185 §§ 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, *former* 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or § 18.2-67.5:1  
186 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual  
187 battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any  
188 violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony  
189 violation of § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92 or § 18.2-93; any felony  
190 violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of  
191 § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation  
192 of § 18.2-279 involving an occupied dwelling; any violation of subsection B of § 18.2-280; any violation  
193 of §§ 18.2-281, 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of subsection A of § 18.2-282;  
194 any violation of subsection A of § 18.2-300; any felony violation of §§ 18.2-308.1 and 18.2-308.2; any  
195 violation of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or  
196 § 18.2-312; any violation of subdivision (2) or (3) of § 18.2-355; any violation of § 18.2-358; any  
197 violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of  
198 §§ 18.2-368, 18.2-370 or § 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony  
199 violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any  
200 felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense  
201 under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or § 18.2-406; any violation of  
202 §§ 18.2-408, 18.2-413, 18.2-414 or § 18.2-433.2; any felony violation of §§ 18.2-460, 18.2-474.1 or  
203 § 18.2-477.1; any violation of §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485; any violation of  
204 § 53.1-203; or any conspiracy or attempt to commit any offense specified in this subsection, and any  
205 substantially similar offense under the laws of any state, the District of Columbia, the United States or  
206 its territories.

207 § 18.2-61. Rape.

208 A. If any person has sexual intercourse with a complaining witness who is not his or her spouse or  
209 causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any  
210 other person and such act is accomplished (i) against the complaining witness's will, by force, threat or  
211 intimidation of or against the complaining witness or another person, or (ii) through the use of the  
212 complaining witness's mental incapacity or physical helplessness, or (iii) with a child under age ~~thirteen~~  
213 13 as the victim, he or she shall be guilty of rape.

214 B. If any person has sexual intercourse with his or her spouse and such act is accomplished (i)  
215 against the spouse's will by force, threat or intimidation of or against the spouse or another *or* (ii)  
216 *through the use of the spouse's mental incapacity or physical helplessness*, he or she shall be guilty of  
217 rape.

218 C. A violation of this section shall be punishable, in the discretion of the court or jury, by  
219 confinement in a state correctional facility for life or for any term not less than ~~five~~ 5 years. There shall  
220 be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the  
221 physical capacity to commit a violation of this section. ~~In any case deemed appropriate by the court,~~  
222 *Upon a finding of guilt under subsection B in any case tried by the court without a jury, the court upon*  
223 *motion of the defendant and with the consent of the complaining witness and the attorney for the*  
224 *Commonwealth, may suspend* all or part of any sentence ~~imposed for a violation of subsection B~~ may be  
225 ~~suspended~~ upon the defendant's completion of counseling or therapy, if not already provided, in the  
226 manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and  
227 such other evidence as may be relevant, the court finds such action will promote maintenance of the  
228 family unit and will be in the best interest of the complaining witness.

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

239 § 18.2-67.1. Forcible sodomy.

240 A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio,  
241 anallungus, or anal intercourse with a complaining witness who is not his or her spouse, or causes a  
242 complaining witness, whether or not his or her spouse, to engage in such acts with any other person,  
243 and

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

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

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

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

C. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than ~~five~~ 5 years. ~~In any case deemed appropriate by the court, Upon a finding of guilt under subsection B in any case tried by the court without a jury, the court upon motion of the defendant and with the consent of the complaining witness and the attorney for the Commonwealth, may suspend all or part of any sentence imposed for a violation of subsection B may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.~~

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

§ 18.2-67.2. Object sexual penetration; penalty.

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

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

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

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

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

C. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than ~~five~~ 5 years. ~~In any case deemed appropriate by the court, Upon a finding of guilt under subsection B in any case tried by the court without a jury, the court upon motion of the defendant and with the consent of the complaining witness and the attorney for the Commonwealth may suspend all or part of any sentence imposed for a violation of subsection B may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.~~

D. Upon a finding of guilt under subsection B in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the

manner prescribed under ~~§ 19.2-218.1~~. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under ~~§ 19.2-218.1~~, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

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

A. In any preliminary hearing of a charge against a person for a violation under subsection B of § 18.2-61, subsection B of § 18.2-67.1, ~~or subsection B of § 18.2-67.2 or § 18.2-67.2-1~~, upon a finding of probable cause the court may request that its court services unit, in consultation with any appropriate social services organization, local board of mental health and mental retardation, or other community mental health services organization, prepare a report analyzing the feasibility of providing counseling or other forms of therapy for the accused and the probability such treatment will be successful. Based upon this report and any other relevant evidence, the court may, ~~(i) with the consent of the accused, the complaining witness and the attorney for the Commonwealth in any case involving a violation of subsection B of § 18.2-61, subsection B of § 18.2-67.1 or subsection B of § 18.2-67.2 or (ii) with the consent of the accused and after consideration of the views of the complaining witness in any case involving a violation of § 18.2-67.2-1~~, authorize the accused to submit to and complete a designated course of counseling or therapy. In such case, the hearing shall be adjourned until such time as counseling or therapy is completed or terminated. Upon the completion of counseling or therapy by the accused and after consideration of a final evaluation to be furnished to the court by the person responsible for conducting such counseling or therapy and such further report of the court services unit as the court may require, and after consideration of the views of the complaining witness, the court, in its discretion, may ~~discharge the accused~~, *upon a finding of guilt in any case tried by the court without a jury, suspend all or part of any sentence* if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

B. No statement or disclosure by the accused concerning the alleged offense made during counseling or any other form of therapy ordered pursuant to this section or §§ 18.2-61, 18.2-67.1, 18.2-67.2, ~~18.2-67.2-1~~ or § 19.2-218.2 may be used against the accused in any trial as evidence, nor shall any evidence against the accused be admitted which was discovered through such statement or disclosure.

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

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

B. After such hearing pursuant to which the accused has completed counseling or therapy and upon the recommendation of the juvenile and domestic relations district court judge conducting the hearing, the judge of the circuit court may ~~dismiss the charge~~, *upon a finding of guilt in any case tried by the court without a jury, suspend all or part of any sentence* with the consent of the attorney for the Commonwealth and if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 19.2-298.1. Registration required of persons convicted of certain offenses; prima facie evidence.

A. "Offense for which registration is required" means:

1. A violation or attempted violation of §§ 18.2-63, 18.2-64.1, ~~former 18.2-67.2-1~~, 18.2-90 with the intent to commit rape, 18.2-374.1 or subsection D of § 18.2-374.1-1 or a third or subsequent conviction of § 18.2-67.4 or a third or subsequent conviction of subsection C of § 18.2-67.5;

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

3. A "sexually violent offense".

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

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

2. §§ 18.2-63, 18.2-64.1, ~~former 18.2-67.2-1~~, § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) or (iii) of § 18.2-48, § 18.2-361, § 18.2-366, or § 18.2-374.1. Conviction of an offense listed under this subdivision 2 shall be deemed a sexually violent offense only if the person has been

convicted of any ~~two~~2 or more such offenses, provided that person had been at liberty between such convictions.

B. Every person convicted on or after July 1, 1997, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, of an offense for which registration is required shall be required as a part of the sentence imposed upon conviction to register and reregister with the Department of State Police as provided in this section. The court shall remand the person to the custody of the local law-enforcement agency of the county or city for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the Department of State Police for inclusion in the Sex Offender and Crimes Against Minors Registry established pursuant to § 19.2-390.1. The court shall order the person to provide to the local law-enforcement agency all information required by the State Police for inclusion in the Registry.

It shall be the duty of the local law-enforcement agency to forward to the State Police all the necessary registration information within ~~seven~~7 days of the date of sentencing and to promptly provide to the State Police such information as is necessary for any reregistration.

C. Every person serving a sentence of confinement or under community supervision as defined in § 53.1-1 on July 1, 1997, for an offense for which registration is required shall be required to register with the Department of State Police and shall be given notice of the duty to register pursuant to § 53.1-116.1 or § 53.1-160.1 as appropriate. In addition, any person who was convicted under Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code and who resides in or was convicted in Virginia, shall be required to register with the Department of State Police.

D. Every person required to register shall register in person within ten days of his release from confinement in a state, local or juvenile correctional facility or, if a sentence of confinement is not imposed, within ~~ten~~10 days of suspension of the sentence or in the case of a juvenile, of disposition. In addition, all persons convicted of violations under the laws of the United States or any other state substantially similar to an offense for which registration is required shall provide in person to the local law-enforcement agency all necessary information for inclusion in the Registry within ten days of establishing a residence within the Commonwealth. The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration, ~~two~~2 sets of fingerprints, proof of residency and two photographs of a type and kind specified by the State Police for inclusion in the Registry and advise the person of his duties regarding reregistration. The State Police shall forthwith post offender information on the Internet in accordance with § 19.2-390.1. Any person required to register shall also be required to reregister in person within ~~ten~~10 days following any change of residence, with the local law-enforcement agency and provide all necessary information for inclusion in the Registry needed for establishing a new residence, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of residence for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police within ~~ten~~10 days. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

The local law-enforcement agency shall promptly submit to the State Police all necessary information for registrations and reregistrations pursuant to this subsection.

E. The registration shall be maintained in the Registry established pursuant to § 19.2-390.1 and shall include the person's name, all aliases which he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current address and a description of the offense or offenses for which he was convicted and shall, if applicable, provide the same information on convictions prior to July 1, 1997, for any of the specified offenses or under a substantially similar law of the United States or any other state.

F. Every person required to register under this section, other than a person convicted of a sexually violent offense but including persons required to register between July 1, 1994, and July 1, 1997, shall reregister with the State Police on an annual basis from the date of the initial registration. Every person convicted of a sexually violent offense, including persons convicted of a sexually violent offense who were required to register between July 1, 1994, and July 1, 1997, shall reregister with the State Police every ~~ninety~~90 days from the date of initial registration. For purposes of this section, reregistration means that the person has notified the State Police, confirmed his then current address and provided such other information, including identifying information, which the State Police may, pursuant to this section and by regulation, require. Upon registration and as may be necessary thereafter, the State Police shall provide the person with an address verification form to be used for reregistration. The form shall contain in bold print a statement indicating that failure to comply with the registration required is punishable as a Class 1 misdemeanor or a Class 6 felony as provided in § 18.2-472.1.

G. Nonresident offenders entering the Commonwealth for employment, to carry on a vocation, or as a student attending school who are required to register in their state of residence or who would be

required to register under this section if a resident of the Commonwealth shall, within ten days of accepting employment or enrolling in school in the Commonwealth, be required to register and reregister in person with the local law-enforcement agency and provide all necessary information for inclusion in the Registry needed for documenting employment or school attendance. The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration, ~~two~~ <sup>two</sup> sets of fingerprints, proof of residency and two photographs of a type and kind specified by the State Police for inclusion in the Registry pursuant to this section. For purposes of this section, "employment" and "carry on a vocation" include employment that is full-time or part-time for a period of time exceeding ~~fourteen~~ <sup>14</sup> days or for an aggregate period of time exceeding ~~thirty~~ <sup>30</sup> days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. For purposes of this section "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

H. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly cause a warrant for the arrest of the person to be issued charging a violation of § 18.2-472.1 by the jurisdiction in which the offender last registered or reregistered or, if the offender failed to comply with the duty to register, in the jurisdiction in which the offender was last convicted of an offense for which registration or reregistration is required. The State Police shall forward to the jurisdiction, together with the warrant, an affidavit signed by the custodian of the records that such person failed to comply with the duty to register or reregister. Such affidavit shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister in any trial for the violation of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the offender's last known residence as shown in the records of the State Police.

I. To establish proof of residence in Virginia for purposes of this section, a person shall present one photo-identification form issued by a governmental agency of the Commonwealth which contains the person's complete name, gender, date of birth and complete address.

J. Pursuant to the requirements of subsection G, to document employment or school attendance in Virginia a person shall present proof of enrollment as a full-time student, or suitable proof of temporary employment in the Commonwealth and ~~one~~ <sup>one</sup> photo-identification form issued by a governmental agency of the person's state of residence which contains the person's complete name, gender, date of birth and complete address.

§ 19.2-298.2. Duration of registration requirement.

Any person required by § 19.2-298.1 to register or reregister shall be required to register for a period of ~~ten~~ <sup>10</sup> years from the date of initial registration. However, any person who has been convicted of (i) any sexually violent offense, or (ii) *former* § 18.2-67.2:1 shall have a continuing duty to reregister, for life.

Any period of confinement in a state or local correctional facility, hospital or any other institution or facility during the otherwise applicable ~~ten~~ <sup>10</sup>-year period shall toll the registration period and the duty to reregister shall be extended.

§ 19.2-298.3. Expungement from Registry.

A. Any person required by § 19.2-298.1 to register, other than a person who has been convicted of (i) any sexually violent offense as defined in § 19.2-298.1, or (ii) any violation of *former* § 18.2-67.2:1 may petition the circuit court in which he was convicted or the circuit court in the jurisdiction where he then resides for removal of his name and all identifying information from the Registry. A petition may not be filed earlier than ten years after the date of the initial registration pursuant to subsection D of § 19.2-298.1. The court shall hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. If, after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at least ~~twenty-four~~ <sup>24</sup> months from the date of the denial to file a new petition for removal from the Registry. A petition for expungement shall not be granted to any person convicted of ~~two~~ <sup>two</sup> or more offenses for which registration is required or convicted of any sexually violent offense.

B. The name of any person required to register under § 19.2-298.1 and all identifying information shall be removed from the Registry by the Department of State Police upon receipt of an order granting a petition pursuant to subsection A or at the end of the period for which the person is required to register under § 19.2-298.2.

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

A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall,



or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty, or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, ~~18.2-67.2:1~~, 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-358, 18.2-361, 18.2-362, 18.2-366, 18.2-367, 18.2-368, 18.2-370, 18.2-370.1, or § 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of §§ 18.2-67.5, 18.2-67.5:2, or § 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least ~~five~~5 days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

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

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

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

§ 19.2-303.4. (Effective July 1, 2003) Payment of costs when proceedings deferred and defendant placed on probation.

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

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

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

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

In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed

551 on probation during deferral of the proceedings pursuant to §§ 16.1-278.8, 16.1-278.9, ~~18.2-61,~~  
552 ~~18.2-67.1, 18.2-67.2, 18.2-67.2:1,~~ 18.2-251 or § 19.2-303.2, or, if the conviction is in a district court, the  
553 clerk to which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of  
554 all the expenses incident to the prosecution, including such as are certified under § 19.2-335, and  
555 execution for the amount of such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339  
556 et seq.) of this title shall apply thereto in like manner as if, on the day of completing the statement,  
557 there was a judgment in such court in favor of the Commonwealth against the accused for such amount  
558 as a fine. However, in any case in which an accused waives trial by jury, at least ~~ten~~ 10 days before  
559 trial, but the Commonwealth or the court trying the case refuses to so waive, then the cost of the jury  
560 shall not be included in such statement or judgment.

561 **2. That § 18.2-67.2:1 of the Code of Virginia is repealed.**

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