

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 461

An Act to amend and reenact §§ 4.1-305, 18.2-36.1, 18.2-51.1, 18.2-53.1, 18.2-57, 18.2-121, 18.2-154, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, 18.2-308.4, 19.2-120, 30-19.1:4, 46.2-301, 46.2-341.28, 46.2-357, 46.2-391, 53.1-116, and 53.1-203 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-12.1, relating to definition of mandatory minimum punishment.

[H 1059]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-305, 18.2-36.1, 18.2-51.1, 18.2-53.1, 18.2-57, 18.2-121, 18.2-154, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, 18.2-308.4, 19.2-120, 30-19.1:4, 46.2-301, 46.2-341.28, 46.2-357, 46.2-391, 53.1-116, and 53.1-203 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-12.1 as follows:

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall purchase or possess, or attempt to purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to purchase or attempt to purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a *mandatory minimum* fine of ~~at least~~ \$500 or ordered to perform a *mandatory minimum* of 50 hours of community service as a condition of probation supervision and (ii) such person's license to operate a motor vehicle in the Commonwealth may be suspended for a period of not more than one year. The court, in its discretion and upon a demonstration of hardship, may authorize any person convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or subsection E of § 18.2-271.1 or when referred to a local community-based probation program established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require a person issued a restricted permit under the provisions of this subsection to be monitored by an alcohol safety action program. The alcohol safety action program shall report to the court any violation of the terms of the restricted permit, any condition related thereto or any failure to remain alcohol-free during the suspension period. ~~However, the sentence imposed pursuant to clause (i) of this subsection shall not be suspended.~~

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any person who has not previously been convicted of ~~under-aged~~ *underaged* possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused. This program may be located in the judicial district in which the charge is brought or in

any judicial district ordered by the court. The services shall be provided by (i) a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, (ii) certified by the Commission on VASAP, or (iii) by a program made available through a community-based probation program established pursuant to § 9.1-174. When an offender is ordered to enter a local community-based probation program rather than the alcohol safety action program, the local community-based probation program shall be responsible for providing for services or referring the offender to education or treatment services as a condition of probation.

Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be treated as a conviction for the purpose of applying this section in any subsequent proceedings.

§ 18.2-12.1. *Mandatory minimum punishment; definition.*

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

§ 18.2-36.1. Certain conduct punishable as involuntary manslaughter.

A. Any person who, as a result of driving under the influence in violation of clause (ii), (iii), or (iv) of § 18.2-266 or any local ordinance substantially similar thereto unintentionally causes the death of another person, shall be guilty of involuntary manslaughter.

B. If, in addition, the conduct of the defendant was so gross, wanton and culpable as to show a reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of not less than one nor more than ~~twenty~~ 20 years, one year of which shall be a mandatory; minimum term of imprisonment.

C. The provisions of this section shall not preclude prosecution under any other homicide statute. This section shall not preclude any other revocation or suspension required by law. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

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

If any person maliciously causes bodily injury to another by any means including the means set out in § 18.2-52, with intent to maim, disfigure, disable or kill, and knowing or having reason to know that such other person is a law-enforcement officer, as defined hereinafter, firefighter, as defined in § 65.2-102, search and rescue personnel as defined hereinafter, or emergency medical services personnel, as defined in § 32.1-111.1 engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, such person shall be guilty of a felony punishable by imprisonment for a period of not less than five years nor more than ~~thirty~~ 30 years and, subject to subdivision (g) of § 18.2-10, a fine of not more than \$100,000. Upon conviction, the sentence of such person shall include a mandatory; minimum term of imprisonment of two years.

If any person unlawfully, but not maliciously, with the intent aforesaid, causes bodily injury to another by any means, knowing or having reason to know such other person is a law-enforcement officer, firefighter, as defined in § 65.2-102, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, he shall be guilty of a Class 6 felony, and upon conviction, the sentence of such person shall include a mandatory; minimum term of imprisonment of one year.

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

~~As used in this section the term "mandatory, minimum" means that the sentence it describes shall be served with no suspension of sentence in whole or in part.~~

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

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

The provisions of § 18.2-51 shall be deemed to provide a lesser-included offense hereof.

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

It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm

or display such weapon in a threatening manner while committing or attempting to commit murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2, robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in § 18.2-51.2, malicious wounding by mob as defined in § 18.2-41 or abduction. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a *mandatory minimum* term of imprisonment of three years for a first conviction, and ~~for to a mandatory minimum~~ term of five years for a second or subsequent conviction under the provisions of this section. ~~Notwithstanding any other provision of law, the sentence prescribed for a violation of the provisions of this section shall not be suspended in whole or in part, nor shall anyone convicted hereunder be placed on probation.~~ Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

§ 18.2-57. Assault and battery.

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

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

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

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

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a ~~mandatory, minimum~~ sentence of ~~fifteen~~ 15 days in jail, two days of which shall ~~not be suspended in whole or in part~~ *be a mandatory minimum term of confinement*. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a ~~mandatory, minimum~~ sentence of confinement of six months ~~which shall not be suspended in whole or in part~~.

E. As used in this section:

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

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

F. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any teacher, principal, assistant principal, guidance counselor, or school security officer, in the course and scope of his acting official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting

physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

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

§ 18.2-121. Entering property of another for purpose of damaging it, etc.

It shall be unlawful for any person to enter the land, dwelling, outhouse or any other building of another for the purpose of damaging such property or any of the contents thereof or in any manner to interfere with the rights of the owner, user or the occupant thereof to use such property free from interference.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor. However, if a person intentionally selects the property entered because of the race, religious conviction, color or national origin of the owner, user or occupant of the property, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a ~~mandatory, minimum~~ term of confinement of at least six months, ~~thirty~~ 30 days of which shall ~~not be suspended, in whole or in part~~ *be a mandatory minimum term of confinement.*

§ 18.2-154. Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty.

Any person who maliciously shoots at, or maliciously throws any missile at or against, any train or cars on any railroad or other transportation company or any vessel or other watercraft, or any motor vehicle or other vehicles when occupied by one or more persons, whereby the life of any person on such train, car, vessel, or other watercraft, or in such motor vehicle or other vehicle, may be put in peril, shall be guilty of a Class 4 felony. In the event of the death of any such person, resulting from such malicious shooting or throwing, the person so offending shall be deemed guilty of murder, the degree to be determined by the jury or the court trying the case without a jury.

If any such act is committed unlawfully, but not maliciously, the person so offending shall be guilty of a Class 6 felony and, in the event of the death of any such person, resulting from such unlawful act, the person so offending shall be deemed guilty of involuntary manslaughter.

If any person commits a violation of this section by maliciously or unlawfully shooting, with a firearm, at a conspicuously marked law-enforcement, fire or rescue squad vehicle, ambulance or any other emergency medical vehicle, the sentence imposed shall include a mandatory, minimum term of imprisonment of one year ~~which shall not be suspended in whole or in part.~~

§ 18.2-248. Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance prohibited; penalties.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.

B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. Any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than ~~forty~~ 40 years and fined not more than \$500,000. Upon a second or subsequent conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years and be fined not more than \$500,000.

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than five years, three years of which shall be a mandatory, minimum term of imprisonment ~~not to be suspended in whole or in part~~ and to be served consecutively with any other sentence and *he* shall be fined not more than \$500,000.

D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of

the controlled substance to use or become addicted to or dependent upon such controlled substance, he shall be guilty of a Class 5 felony.

E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharmacist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

F. Any person who violates this section with respect to a controlled substance classified in Schedule III, IV or V or an imitation controlled substance which imitates a controlled substance classified in Schedule III, IV or V, except for an anabolic steroid classified in Schedule III constituting a violation of § 18.2-248.5, shall be guilty of a Class 1 misdemeanor.

G. Any person who violates this section with respect to an imitation controlled substance which imitates a controlled substance classified in Schedule I or II shall be guilty of a Class 6 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this subsection that the defendant believed the imitation controlled substance to actually be a controlled substance.

H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give or distribute the following:

1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;
2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:
 - a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine base;

4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than ~~one~~ \$1 million dollars and imprisonment for ~~twenty~~ 20 years to life, ~~twenty~~ 20 years of which shall be a mandatory; minimum sentence which shall be served with no suspension in whole or in part. Such mandatory; minimum sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an offense listed in subsection C of § 17.1-805, (ii) the person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so, (iii) the offense did not result in death or serious bodily injury to any person, (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section, and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

H1. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at least \$100,000 but less than \$250,000 in gross receipts during any ~~twelve~~ 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any ~~twelve~~ 12-month period of its existence:

1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable amount of:

- a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
- b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
- d. Any compound, mixture, or preparation which contains any quantity of any of the substances

referred to in subdivisions a through c;

3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;

4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A conviction under this section shall be punishable by a fine of not more than ~~one~~ \$1 million dollars and imprisonment for ~~twenty~~ 20 years to life, ~~twenty~~ 20 years of which shall be a mandatory; minimum sentence ~~which shall be served with no suspension in whole or in part.~~

H2. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross receipts during any ~~twelve~~ 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any ~~twelve~~ 12-month period of its existence:

1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

2. At least 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;

4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than ~~one~~ \$1 million dollars and imprisonment for life, which shall be served with no suspension in whole or in part. Such punishment shall be made to run consecutively with any other sentence. However, the court may impose a mandatory; minimum sentence of ~~forty~~ 40 years if the court finds that the defendant substantially cooperated with law-enforcement authorities.

I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he violates any provision of this section, the punishment for which is a felony and (ii) such violation is a part of a continuing series of violations of this section which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and from which such person obtains substantial income or resources.

§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) it is unlawful for any person to transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance or five or more pounds of marijuana. A violation of this section shall constitute a separate and distinct felony. Upon conviction, the person shall be sentenced to not less than five years nor more than ~~forty~~ 40 years imprisonment, three years of which shall be a ~~minimum~~; mandatory *minimum* term of imprisonment, and a fine not to exceed \$1,000,000. A second or subsequent conviction hereunder shall be punishable by a ~~minimum~~; mandatory *minimum* term of imprisonment of ~~ten~~ 10 years, which ~~shall not be suspended in whole or in part and~~ shall be served consecutively with any other sentence.

§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.

Except as authorized in the Drug Control Act, Chapter 34 of Title 54.1, it shall be unlawful for any person to sell, give, distribute or possess with intent to sell, give or distribute marijuana.

(a) Any person who violates this section with respect to:

(1) Not more than one-half ounce of marijuana is guilty of a Class 1 misdemeanor;

(2) More than one-half ounce but not more than five pounds of marijuana is guilty of a Class 5 felony;

(3) More than five pounds of marijuana is guilty of a felony punishable by imprisonment of not less than five nor more than ~~thirty~~ 30 years.

If such person proves that he gave, distributed or possessed with intent to give or distribute

marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or dependent upon such marijuana, he shall be guilty of a Class 1 misdemeanor.

(b) Any person who gives, distributes or possesses marijuana as an accommodation and not with intent to profit thereby, to an inmate of a state or local correctional facility as defined in § 53.1-1, or in the custody of an employee thereof shall be guilty of a Class 4 felony.

(c) Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, not for his own use is guilty of a felony punishable by imprisonment of not less than five nor more than ~~thirty~~ 30 years and a fine not to exceed \$10,000.

(d) When a person is convicted of a third or subsequent felony offense under this section and it is alleged in the warrant, indictment or information that he has been before convicted of two or more felony offenses under this section or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment or information, he shall be sentenced to imprisonment for life or for any period not less than five years, three years of which shall be a ~~minimum~~, mandatory *minimum* term of imprisonment ~~not to be suspended in whole or in part~~ and to be served consecutively with any other sentence and *he* shall be fined not more than \$500,000.

§ 18.2-248.5. Illegal stimulants and steroids; penalty.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), Chapter 34 of Title 54.1, it shall be unlawful for any person to knowingly manufacture, sell, give, distribute or possess with intent to manufacture, sell, give or distribute any anabolic steroid.

A violation of subsection A shall be punishable by a term of imprisonment of not less than one year nor more than ~~ten~~ 10 years or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than ~~twelve~~ 12 months or a fine of not more than \$20,000, either or both. Any person violating the provisions of this subsection shall, upon conviction, be incarcerated for a ~~minimum~~, mandatory *minimum* term of six months ~~which shall not be suspended in whole or in part~~ and ~~shall to be served consecutively with any other sentence.~~

B. It shall be unlawful for any person to knowingly sell or otherwise distribute, without prescription, to a minor any pill, capsule or tablet containing any combination of caffeine and ephedrine sulfate.

A violation of this subsection B shall be punishable as a Class 1 misdemeanor.

§ 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty.

A. Except as authorized in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, it shall be unlawful for any person who is at least ~~eighteen~~ 18 years of age to knowingly or intentionally (i) distribute any drug classified in Schedule I, II, III or IV or marijuana to any person under ~~eighteen~~ 18 years of age who is at least three years his junior or (ii) cause any person under ~~eighteen~~ 18 years of age to assist in such distribution of any drug classified in Schedule I, II, III or IV or marijuana. Any person violating this provision shall upon conviction be imprisoned in a state correctional facility for a period not less than ~~ten~~ 10 nor more than ~~fifty~~ 50 years, and fined not more than \$100,000. Five years of the sentence imposed ~~shall not be suspended, in whole or in part~~ for a conviction under this section involving a Schedule I or II controlled substance or one ounce or more of marijuana *shall be a mandatory minimum sentence*. Two years of the sentence imposed ~~shall not be suspended, in whole or in part~~, for a conviction *under this section* involving less than one ounce of marijuana *shall be a mandatory minimum sentence*.

B. It shall be unlawful for any person who is at least ~~eighteen~~ 18 years of age to knowingly or intentionally (i) distribute any imitation controlled substance to a person under ~~eighteen~~ 18 years of age who is at least three years his junior or (ii) cause any person under ~~eighteen~~ 18 years of age to assist in such distribution of any imitation controlled substance. Any person violating this provision shall be guilty of a Class 6 felony.

§ 18.2-255.2. Prohibiting the sale of drugs on or near certain properties.

A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance or marijuana while (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; (iv) upon a designated school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity; (v) upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility or any public library; or (vi) upon the property of any state hospital as defined in § 37.1-1 or upon public property or property open to public use within 1,000 feet of such an institution. It is a violation of the provisions of this section if the person possessed the controlled substance, imitation controlled substance or marijuana on the property described in clauses (i) through (vi) of this subsection, regardless of where the person

intended to sell, give or distribute the controlled substance, imitation controlled substance or marijuana. Nothing in this section shall prohibit the authorized distribution of controlled substances.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than \$100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control Act (§ 54.1-3400 et seq.) or more than one-half ounce of marijuana shall be punished by a ~~minimum~~, mandatory *minimum* term of imprisonment of one year ~~which shall not be suspended in whole or in part and shall to be served consecutively with any other sentence.~~ However, if such person proves that he sold such controlled substance or marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he shall be guilty of a Class 1 misdemeanor.

C. If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby.

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional mandatory; minimum period of five days or, if the level was more than 0.25, for an additional mandatory; minimum period of 10 days. ~~The additional mandatory; minimum period of confinement shall not be suspended by the court.~~ In addition, such person shall be fined a mandatory; minimum fine of \$250; ~~which shall not be suspended by the court.~~

B. 1. Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory; minimum fine of \$500; ~~which shall not be suspended by the court;~~ and by confinement in jail for not less than one month nor more than one year. Five days of such confinement shall be a mandatory; minimum sentence ~~not subject to suspension by the court.~~

2. Any person convicted of a second offense committed within a period of five to ~~ten~~ 10 years of a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory; minimum fine of \$500; ~~which shall not be suspended by the court;~~ and by confinement in jail for not less than one month.

3. Upon conviction of a second offense within 10 years of a first offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional ~~minimum~~, mandatory *minimum* period of 10 days or, if the level was more than 0.25, for an additional mandatory; minimum period of 20 days. ~~The additional mandatory; minimum period of confinement shall not be suspended by the court.~~ In addition, such person shall be fined a mandatory; minimum fine of \$500; ~~which shall not be suspended by the court.~~

C. Any person convicted of three or more offenses of § 18.2-266 committed within a 10-year period shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a mandatory; minimum sentence of confinement for 10 days ~~that shall not be subject to suspension by the court.~~ In addition, such person shall be fined a mandatory; minimum fine of \$1,000; ~~which shall not be suspended by the court.~~ Any person convicted of a third offense committed within five years of an offense under § 18.2-266 shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a mandatory; minimum sentence of confinement for 30 days ~~that shall not be subject to suspension by the court.~~ In addition, such person shall be fined a mandatory; minimum fine of \$1,000; ~~which shall not be suspended by the court.~~ The punishment of any person convicted of a fourth or subsequent offense committed within a 10-year period shall, upon conviction, include a mandatory; minimum term of imprisonment of one year; ~~none of which may be suspended in whole or in part.~~ In addition, such person shall be fined a mandatory; minimum fine of \$1,000; ~~which shall not be suspended by the court.~~ Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed three years.

D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1000 and (ii) sentenced to a mandatory; minimum period of confinement of five days.

E. For the purpose of this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a prior conviction: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or

town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of §§ 18.2-51.4, and 18.2-266 through 18.2-269, or (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited.

A. If any person possesses any (i) stun weapon or taser as defined in this section, (ii) knife, except a pocket knife having a folding metal blade of less than three inches, or (iii) weapon, including a weapon of like kind, designated in subsection A of § 18.2-308, other than a firearm, upon (a) the property of any public, private or parochial elementary, middle or high school, including buildings and grounds, (b) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (c) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony; however, if the person possesses any firearm within a public, private or parochial elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall ~~not be eligible for probation~~ and shall be sentenced to a ~~minimum~~, mandatory *minimum* term of imprisonment of five years, ~~which shall not be suspended in whole or in part and which shall to be served consecutively with any other sentence.~~

The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities, (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose, (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises, (iv) any law-enforcement officer while engaged in his duties as such, (v) any person who possesses a knife or blade which he uses customarily in his trade, or (vi) a person who possesses an unloaded firearm that is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer and "closed container" includes a locked vehicle trunk.

As used in this section:

"Stun weapon" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five millamp 60 hertz shock and (ii) used for the purpose of temporarily incapacitating a person; and

"Taser" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile and (ii) used for the purpose of temporarily incapacitating a person.

§ 18.2-308.2. Possession or transportation of firearms, stun weapons, tasers or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of 29 who was found guilty as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or stun weapon or taser as defined by § 18.2-308.1 or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon or taser as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall ~~not be eligible for probation~~, and shall be sentenced to a ~~minimum~~, mandatory *minimum* term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony shall ~~not be eligible for probation~~, and shall be sentenced to a ~~minimum~~, mandatory *minimum* term of imprisonment of two years. The ~~minimum~~, mandatory *minimum* terms of imprisonment prescribed for violations of this section shall ~~not be suspended in whole or in part~~ and shall be served consecutively with any other sentence. Any firearm, stun weapon or taser as defined by § 18.2-308.1, or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or

other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm, stun weapon or taser under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm, stun weapon or taser; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection.

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms; firearm safety information to be provided.

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only, in addition to the information required by subdivision B 1, the identical information required to be included on the firearms transaction record required by regulations administered by the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury, except that the copies of such forms mailed or delivered to the Department of State Police shall not include any information related to the firearm purchased or transferred.

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent as specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested criminal history record information by a telephone call to the State Police and is authorized by subdivision B 2 of this section to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense, and other documentation of residence. Except where the photo-identification was issued by the United States Department of Defense, the other documentation of residence shall show an address identical to that shown on the photo-identification form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; other current identification allowed as evidence of residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 79-7; or other documentation of residence determined to be acceptable by the Department of Criminal Justice Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the photo-identification was issued by the Department of Defense, permanent orders may be used as documentation of residence. Additionally, when the photo-identification presented to a dealer by the prospective purchaser is a driver's license or other photo-identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo-identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the United States State Department, a certificate of citizenship or a certificate of naturalization issued by the ~~Immigration and Naturalization Service~~ *United States Citizenship and Immigration Services*, an unexpired U.S. passport, a United States citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other documentation of status as a person lawfully admitted for permanent residence issued by the ~~Immigration and Naturalization Service~~ *United States Citizenship and Immigration Services*.

Upon receipt of the request for a criminal history record information check, the State Police shall (1) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (2) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (3) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's call, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision B 1 of this subsection may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision B 1 of this subsection and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of 12 months, and such log shall consist of the name of the purchaser, the dealer identification number, the unique approval number and the transaction date.

4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by persons who are citizens of the United States or persons lawfully admitted for permanent residence but residents of other states under the terms of subsections A and B upon furnishing the dealer with proof of citizenship or status as a person lawfully admitted for permanent residence and one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include December 25.

C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, other than a rifle or a shotgun, to any person who is not a resident of Virginia unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law. The dealer shall obtain the required report by mailing or delivering the written consent form required under subsection A to the State Police within 24 hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within 10 days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.

D. Nothing herein shall prevent a resident of this Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer by obtaining a criminal history record information check through the dealer as provided in subsection C.

E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 days of such denial.

F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section shall be guilty of a Class 2 misdemeanor.

G. For purposes of this section:

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

4. Any curio or relic as defined in this subsection.

"Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

"Curios or relics" means firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant to this section.

I. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq., (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government, (iii) antique firearms, or (iv) transactions in any county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than this section.

J. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of \$5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 felony. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years, ~~which shall not be suspended in whole or in part nor shall the person be eligible for parole during that period.~~

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of a Class 5 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years, which shall not be suspended in whole or in part nor shall the person be eligible for parole during that period.

O. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating whether the driver's license is an original, duplicate or renewed driver's license.

P. The Department of Education, in conjunction with the Department of Game and Inland Fisheries, shall develop a standard informational form and posted notice to be furnished to each licensed firearms dealer in the Commonwealth at no cost to the dealer. The form and notice shall provide basic information of the laws governing the purchase, possession and use of firearms by juveniles and adults.

Copies of the form shall be made available by the dealer whenever a firearm is purchased.

Every firearms dealer shall conspicuously post the written notice which shall be at least eight and one-half inches by ~~eleven~~ 11 inches in size and printed in boldface type of a minimum size of 10 points. A licensed firearms dealer shall not be liable for damages for injuries resulting from the discharge of a firearm purchased from the dealer if, at the time of the purchase, the dealer failed to provide the form or failed to post the written notice.

Q. Except as provided in subdivisions 1, 2 and 3 of this subsection, it shall be unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an enhanced background check, as described herein, by special application to the Department of State Police listing the number and type of handguns to be purchased and transferred for lawful business or personal use, in a collector series, for collections, as a bulk purchase from estate sales and for similar purposes. Such applications shall be signed under oath by the applicant on forms provided by the Department of State Police, shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales report required by the Bureau of Alcohol, Tobacco and Firearms (ATF). The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above the limit.

Upon being satisfied that these requirements have been met, the Department of State Police shall forthwith issue to the applicant a nontransferable certificate which shall be valid for seven days from the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates forthwith pursuant to this subsection. Applications and certificates issued under this subsection shall be maintained as records as provided in subdivision 3 of subsection B. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subsection and all records provided for in subdivision 3 of subsection B.

2. The provisions of this subsection shall not apply to:

- a. A law-enforcement agency;
- b. An agency duly authorized to perform law-enforcement duties;
- c. State and local correctional facilities;
- d. A private security company licensed to do business within the Commonwealth;
- e. The purchase of antique firearms as herein defined;
- f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, the description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police; or

g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day.

3. For the purposes of this subsection, "purchase" shall not include the exchange or replacement of a handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange

or replacement within the 30-day period immediately preceding the date of exchange or replacement.

§ 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.

B. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony and any person convicted hereunder is ~~not eligible for probation~~ and shall be sentenced to a ~~minimum~~, mandatory *minimum* term of imprisonment of two years, ~~which shall not be suspended in whole or in part~~. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana. A violation of this subsection is a Class 6 felony, and constitutes a separate and distinct felony and any person convicted hereunder is ~~not eligible for probation~~ and shall be sentenced to a ~~minimum~~, mandatory *minimum* term of imprisonment of five years, ~~which shall not be suspended in whole or in part~~. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

D. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.

§ 19.2-120. Admission to bail.

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or
2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;
2. An offense for which the maximum sentence is life imprisonment or death;
3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is ~~ten~~ 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;
4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and provides for a ~~minimum~~, mandatory *minimum* sentence;
5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;
6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;
7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged; or
8. A violation of § 18.2-46.5 or § 18.2-46.7.

C. The court shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;
2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
3. The nature and seriousness of the danger to any person or the community that would be posed by

the person's release.

D. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2-124.

§ 30-19.1:4. Increase in terms of imprisonment or commitment; fiscal impact statements; appropriations for operating costs.

A. The Virginia Criminal Sentencing Commission shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill which would result in a net increase in periods of imprisonment in state adult correctional facilities. The Department of Planning and Budget shall annually provide the Virginia Criminal Sentencing Commission with the operating cost per inmate.

B. The Department of Planning and Budget, in conjunction with the Department of Juvenile Justice, shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill that would result in a net increase in periods of commitment to the custody of the Department of Juvenile Justice.

C. The requirement for a fiscal impact statement includes, but is not limited to, those bills which add new crimes for which imprisonment or commitment is authorized, increase the periods of imprisonment or commitment authorized for existing crimes, impose minimum or mandatory *minimum* terms of imprisonment or commitment, or modify the law governing release of prisoners or juveniles in such a way that the time served in prison, or the time committed to the custody of the Department of Juvenile Justice, will increase.

D. The fiscal impact statement of any bill introduced on or after July 1, 2002, that would result in a net increase in periods of imprisonment in state correctional facilities or periods of commitment to the custody of the Department of Juvenile Justice, shall include an analysis of the fiscal impact on local and regional jails, state and local community corrections programs and juvenile detention facilities.

E. The amount of the estimated appropriation reflected in the fiscal impact statement shall be printed on the face of each such bill, but shall not be codified. If the agency responsible for preparing the fiscal impact statement does not have sufficient information to project the impact, the fiscal impact statement shall state this, and the words "Cannot be determined" shall be printed on the face of each such bill.

F. The fiscal impact statement shall include, but not be limited to, details as to any increase or decrease in the offender population. Statements prepared by the Virginia Criminal Sentencing Commission shall detail any necessary adjustments in guideline midpoints for the crime or crimes affected by the bill as well as adjustments in guideline midpoints for other crimes affected by the implementation of the bill that, in the opinion of the Commission, are necessary and appropriate.

G. The agency preparing the fiscal impact statement shall forward copies of such impact statements to the Clerk of the House of Delegates and the Clerk of the Senate for transmittal to each patron of the legislation and to the chairman of each committee of the General Assembly to consider the legislation.

H. For each law enacted which results in a net increase in periods of imprisonment in state correctional facilities or a net increase in periods of commitment or the time committed to the custody of the Department of Juvenile Justice, a one-year appropriation shall be made from the general fund equal to the estimated increase in operating costs of such law, in current dollars, of the highest of the next six fiscal years following the effective date of the law. "Operating costs" means all costs other than capital outlay costs.

I. The Corrections Special Reserve Fund (the Fund) is hereby established as a nonreverting special fund on the books of the Comptroller. The Fund shall consist of all moneys appropriated by the General Assembly under the provisions of this section and all interest thereon. Any moneys deposited in the Fund shall remain in the Fund at the end of the biennium. Moneys in the Fund shall be expended solely for capital expenses, including the cost of planning or preplanning studies that may be required to initiate capital outlay projects.

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.

A. In addition to any other penalty provided by this section, any motor vehicle administratively impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be impounded or immobilized for an additional period of up to ~~ninety~~ 90 days upon conviction of an offender for driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for (i) a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction or (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2. However, if, at the time of the violation, the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the offender prior to the release of his motor vehicle.

B. Except as provided in §§ 46.2-304 and 46.2-357, no resident or nonresident (i) whose driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who

has been directed not to drive by any court, by the Commissioner, or by operation of law pursuant to this title or (iii) who has been forbidden, as prescribed by law, by the Commissioner, the State Corporation Commission, the Commonwealth Transportation Commissioner, any court, or the Superintendent of State Police, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the period of such suspension or revocation has terminated. A clerk's notice of suspension of license for failure to pay fines or costs given in accordance with § 46.2-395 shall be sufficient notice for the purpose of maintaining a conviction under this section. For the purposes of this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.

C. A first or second offense of violating this section shall constitute a Class 1 misdemeanor. A third or subsequent offense shall constitute a Class 1 misdemeanor punishable by a ~~minimum~~, mandatory *minimum* term of confinement in jail of ~~ten 10~~ days which shall not be suspended in whole or in part. However, the court shall not be required to impose a ~~minimum~~, mandatory *minimum* term of confinement in any case where a motor vehicle is operated in violation of this section in a situation of apparent extreme emergency which requires such operation to save life or limb.

In addition, the court shall suspend the person's driver's license for the same period for which it had been previously suspended or revoked when the person violated this section.

D. In the event the person has violated this section by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for an additional period not to exceed ~~ninety~~ 90 days. Any additional suspension ordered under the provisions of this section shall commence upon the expiration of the previous suspension or revocation unless the previous suspension or revocation has expired prior to the ordering of an additional suspension or revocation.

§ 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense; prior conviction.

Any person violating any provision of subsection A of § 46.2-341.24 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense committed within less than five years after a first offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Five days of such confinement shall be a mandatory, minimum sentence ~~not subject to suspension by the court~~. Any person convicted of a second offense committed within a period of five to ~~ten 10~~ years of a first offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense committed within ~~ten 10~~ years of an offense under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$500 nor more than \$2,500 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence ~~not subject to suspension by the court~~ if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence ~~not subject to suspension by the court~~ if the third or subsequent offense occurs within a period of five to ~~ten 10~~ years of a first offense.

For the purposes of this section a conviction or finding of not innocent in the case of a juvenile under (i) § 18.2-51.4 or § 18.2-266, (ii) the ordinance of any county, city or town in this Commonwealth substantially similar to the provisions of § 18.2-51.4 or § 18.2-266, (iii) subsection A of § 46.2-341.24, or (iv) the laws of any other state substantially similar to the provisions of §§ 18.2-51.4, 18.2-266 or subsection A of § 46.2-341.24, shall be considered a prior conviction.

§ 46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.

A. It shall be unlawful for any person determined or adjudicated an habitual offender to drive any motor vehicle or self-propelled machinery or equipment on the highways of the Commonwealth while the revocation of the person's driving privilege remains in effect. However, the revocation determination shall not prohibit the person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

B. Except as provided in subsection D, any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle or self-propelled machinery or equipment in the Commonwealth while the revocation determination is in effect, shall be punished as follows:

1. If such driving does not of itself endanger the life, limb, or property of another, such person shall be guilty of a Class 1 misdemeanor punishable by a ~~minimum~~, mandatory *minimum* term of confinement in jail for ~~no less than ten of 10~~ days, which shall not be suspended except in cases designated in ~~subdivision 2 (ii) of this subsection~~ *wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended.*

2. If such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24, irrespective of whether the driving of itself endangers the life, limb or property of another and the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years, *one year of which shall be a mandatory minimum term of confinement* or, in the discretion of the jury or the court trying the case without a jury, by *mandatory minimum* confinement in jail for ~~twelve~~ *a period of 12 months and no portion of such sentence shall be suspended*. However, (i) if the sentence is more than one year in a state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency ~~which~~ *that* require such operation to save life or limb, ~~said~~ *the* sentence, or any part thereof, may be suspended. For the purposes of this section, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of law herein shall be considered an offense in violation of such provision of law.

3. If the offense of driving while a determination as an habitual offender is in effect is a second or subsequent such offense, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

C. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle or self-propelled machinery or equipment while his license, permit, or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person has been determined an habitual offender and, by reason of this determination, is barred from driving a motor vehicle or self-propelled machinery or equipment on the highways in the Commonwealth. If the court determines the accused has been determined to be an habitual offender and finds there is probable cause that the alleged offense under this section is a felony, it shall certify the case to the circuit court of its jurisdiction for trial.

D. Notwithstanding the provisions of subdivisions 2 and 3 of subsection B, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of drugs or intoxicants), if the subsequent violation occurred within ~~ten~~ 10 years from the prior violation, or (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within ~~ten~~ 10 years of the prior offense. However, if the Commissioner has received a copy of a court order authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. For the purposes of this subsection, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of Virginia law herein shall be considered an offense in violation of such provision of Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so unless the requirement for completion of the program has been waived by the court for good cause shown.

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1 or § 18.2-51.4 or (ii) adjudged to be a third offender within a period of ~~ten~~ 10 years in violation of the provisions of subsection A of § 46.2-341.24 or § 18.2-266, or a substantially similar ordinance or law of any other jurisdiction.

C. Any person who has had his driver's license revoked in accordance with subsection B of this section may petition the circuit court of his residence, or, if a nonresident of Virginia, any circuit court:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of his last conviction. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a period of at least six months, and upon whatever other conditions the court may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence

presented that: (i) at the time of his previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

2. For a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment after the expiration of three years from the date of his last conviction. The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court shall prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

The ignition interlock system installation requirement under subdivisions 1 and 2 of this subsection need only be satisfied once as to any single revocation under subsection B of this section for any person seeking restoration under subdivision 1 following the granting of a restricted license under subdivision 1 or 2.

D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted license issued pursuant to subsection C shall, provided such revocation was based on at least one conviction for an offense committed after July 1, 1999, be punished as follows:

1. If such driving does not of itself endanger the life, limb, or property of another, such person shall be guilty of a Class 1 misdemeanor punishable by a ~~minimum~~, mandatory *minimum* term of confinement in jail for ~~no less than ten of 10 days which shall not be suspended~~ except in cases ~~designated in subdivision 2 b (ii) of this subsection wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended.~~

2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of itself endangers the life, limb or property of another and the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years, *one year of which shall be a mandatory minimum term of confinement* or, in the discretion of the jury or the court trying the case without a jury, by *mandatory minimum* confinement in jail for ~~twelve a period of 12 months and no portion of such sentence shall be suspended.~~

b. However, (i) if the sentence is more than one year in a state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency ~~which that~~ require such operation to save life or limb, ~~said the sentence, or any part thereof, may be suspended.~~

3. If any such offense of driving is a second or subsequent violation, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

F. Any period of driver's license revocation imposed pursuant to this section shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

G. Nothing in this section shall prohibit a person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another such tract of land when the distance between the tracts is no more than five miles.

H. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B, or (ii) in violation of the terms of a restricted license issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be guilty of a violation of § 18.2-272.

§ 53.1-116. What records and policy jailer shall keep; how time deducted or added for felons and misdemeanants; payment of fine and costs by person committed to jail until he pays.

A. The jailer shall keep a (i) record describing each person committed to jail, the terms of confinement, for what offense or cause he was committed, and when received into jail; (ii) record of each prisoner; and (iii) written policy stating the criteria for and conditions of earned credit in the facility.

Unless he is serving a mandatory minimum sentence of confinement, each prisoner sentenced to 12 months or less for a misdemeanor or any combination of misdemeanors shall earn good conduct credit at the rate of one day for each one day served, including all days served while confined in jail prior to conviction and sentencing, in which the prisoner has not violated the written rules and regulations of the jail ~~unless a mandatory minimum sentence is imposed by law~~. Prisoners eligible for parole under §§ 53.1-151, 53.1-152 or § 53.1-153 shall earn good conduct credit at a rate of 15 days for each 30 days served with satisfactory conduct.

The jailer may grant the prisoner additional credit for performance of institutional work assignments or participation in a local work force program at the rate of five days for every 30 days served. The time so deducted shall be allowed to each prisoner for such time as he is confined in jail. For each violation of the rules prescribed herein, the time so deducted shall be added until it equals the full sentence imposed upon the prisoner by the court.

However, any prisoner committed to jail upon a felony offense committed on or after January 1, 1995, shall not earn good conduct credit, sentence credit, earned sentence credit, other credit, or a combination of any credits in excess of that permissible under Article 4 (§ 53.1-202.2 et seq.) of Chapter 6 of this title. So much of an order of any court contrary to the provisions of this section shall be deemed null and void.

B. Notwithstanding the provisions of § 19.2-350, in the event a person who was committed to jail to be therein confined until he pays a fine imposed on him by the court in which he was tried should desire to pay such fine and costs, he may pay the same to the person in charge of the jail. The person receiving such moneys shall execute and deliver an official receipt therefor and shall promptly transmit the amount so paid to the clerk of the court which imposed the fine and costs. Such clerk shall give him an official receipt therefor and shall properly record the receipt of such moneys.

C. The administrator of a local or regional jail shall not assign a person to a home/electronic incarceration program pursuant to subsection C of § 53.1-131.2 in a locality which has a jail operated by a sheriff, without the consent of the sheriff.

§ 53.1-203. Felonies by prisoners; penalties.

It shall be unlawful for a prisoner in a state, local or community correctional facility or in the custody of an employee thereof to:

1. Escape from a correctional facility or from any person in charge of such prisoner;
2. Willfully break, cut or damage any building, furniture, fixture or fastening of such facility or any part thereof for the purpose of escaping, aiding any other prisoner to escape therefrom or rendering such facility less secure as a place of confinement;
3. Make, procure, secrete or have in his possession any instrument, tool or other thing for the purpose of escaping from or aiding another to escape from a correctional facility or employee thereof;
4. Make, procure, secrete or have in his possession a knife, instrument, tool or other thing not authorized by the superintendent or sheriff which is capable of causing death or bodily injury;
5. Procure, sell, secrete or have in his possession any chemical compound which he has not lawfully received;
6. Procure, sell, secrete or have in his possession a controlled substance classified in Schedule III of the Drug Control Act (§ 54.1-3400 et seq.) or marijuana;
7. Introduce into a correctional facility or have in his possession firearms or ammunition for firearms;

8. Willfully burn or destroy by use of any explosive device or substance, in whole or in part, or cause to be so burned or destroyed, any personal property, within any correctional facility; or
9. Conspire with another prisoner or other prisoners to commit any of the foregoing acts.

For violation of any of the provisions of this section, except subdivision 6, the prisoner shall be guilty of a Class 6 felony. For a violation of subdivision 6, he shall be guilty of a Class 5 felony. If the violation is of subdivision 1 of this section and the escapee is a felon, he shall be sentenced to a *mandatory minimum of one year's term of confinement of one year*, which ~~sentence shall not be suspended, in whole or in part, nor served concurrently~~ *shall be served consecutively* with any other sentence. The prisoner shall, upon conviction of escape, immediately commence to serve such escape sentence, and he shall not be eligible for parole during such period. Any prisoner sentenced to life imprisonment who escapes shall not be eligible for parole. No part of the time served for escape shall be credited for the purpose of parole toward the sentence or sentences, the service of which is interrupted for service of the escape sentence, nor shall it be credited for such purpose toward any other sentence.