040795134

HOUSE BILL NO. 1053

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 8.01-44.4, 9.1-902, 9.1-908, 9.1-910, 16.1-69.48:1, 16.1-260, 16.1-269.1, 16.1-301, 17.1-275.1, 17.1-275.2, 17.1-275.7, 17.1-805, 18.2-9, 18.2-10, 18.2-23, 18.2-25, 18.2-31, 18.2-32, 18.2-46.5, 18.2-46.6, 18.2-47 through 18.2-49.1, 18.2-51 through 18.2-53, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-57, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-67.1, 18.2-67.2, 18.2-67.10, 18.2-89, 18.2-93 through 18.2-97, 18.2-102, 18.2-103, 18.2-105.1, 18.2-108.01, 18.2-110, 18.2-111, 18.2-128, 18.2-137, 18.2-138, 18.2-144, 18.2-145.1, 18.2-147.1, 18.2-150, 18.2-152.3, 18.2-152.4, 18.2-153, 18.2-154, 18.2-155, 18.2-162, 18.2-181, 18.2-181.1, 18.2-186, 18.2-186.3, 18.2-187.1, 18.2-188, 18.2-192, 18.2-194, 18.2-195, 18.2-195.2, 18.2-197, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-248.5, 18.2-251.3, 18.2-255, 18.2-289, 18.2-300, 18.2-427, 18.2-481, 19.2-163, 19.2-218.1, 19.2-218.2, 19.2-264.4, 19.2-270.1, 19.2-289, 19.2-290, 19.2-297.1, 19.2-298.01, 19.2-299, 19.2-303.4, 19.2-310.2:1, 19.2-327.2, 19.2-327.3, 19.2-335, 19.2-336, 22.1-254, 27-32.1, 29.1-553, 32.1-126.01, 32.1-162.9:1, 32.1-318, 32.1-321.4, 37.1-20.3, 37.1-183.3, 37.1-197.2, 53.1-40.01, 53.1-151, 54.1-2989, 58.1-4018, 63.2-525, 63.2-1719 and 63.2-1726 of the Code of Virginia, and to amend the Code of Virginia by adding in Article 4 of Chapter 4 of Title 18.2 a section numbered 18.2-51.01, to amend the Code of Virginia by adding sections numbered 18.2-58.01 through 18.2-58.013, by adding sections numbered 18.2-77.1 through 18.2-77.9, by adding sections numbered 18.2-89.1 through 18.2-89.16, by adding sections numbered 18.2-95.1 through 18.2-95.7, by adding a section numbered 18.2-137.01 and to repeal § 18.2-67.2:1, §§ 18.2-77 through 18.2-81, and §§ 18.2-90 through 18.2-92 of the Code of Virginia, relating to various crimes and penalties.

Patrons—Albo, McDonnell, Armstrong, Griffith, Kilgore and Moran; Senators: Howell, Norment and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-44.4, 9.1-902, 9.1-908, 9.1-910, 16.1-69.48:1, 16.1-260, 16.1-269.1, 16.1-301, 17.1-275.1, 17.1-275.2, 17.1-275.7, 17.1-805, 18.2-9, 18.2-10, 18.2-23, 18.2-25, 18.2-31, 18.2-32, 18.2-46.5, 18.2-46.6, 18.2-47 through 18.2-49.1, 18.2-51 through 18.2-53, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-57, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-67.1, 18.2-67.2, 18.2-67.10, 18.2-89, 18.2-93 through 18.2-97, 18.2-102, 18.2-103, 18.2-105.1, 18.2-108.01, 18.2-110, 18.2-111, 18.2-128, 18.2-137, 18.2-138, 18.2-144, 18.2-145.1, 18.2-147.1, 18.2-150, 18.2-152.3, 18.2-152.4, 18.2-153, 18.2-154, 18.2-155, 18.2-162, 18.2-181, 18.2-181.1, 18.2-186, 18.2-186.3, 18.2-187.1, 18.2-188, 18.2-192, 18.2-195, 18.2-194, 18.2-195.2, 18.2-197, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-248.5, 18.2-251.3, 18.2-255, 18.2-289, 18.2-300, 18.2-427, 18.2-481, 19.2-163, 19.2-218.1, 19.2-218.2, 19.2-264.4, 19.2-270.1, 19.2-289, 19.2-290, 19.2-297.1, 19.2-298.01, 19.2-299, 19.2-303.4, 19.2-310.2:1, 19.2-327.2, 19.2-327.3, 19.2-335, 19.2-336, 22.1-254, 27-32.1, 29.1-553, 32.1-126.01, 32.1-162.9:1, 32.1-318, 32.1-321.4, 37.1-20.3, 37.1-183.3, 37.1-197.2, 53.1-40.01, 53.1-151, 54.1-2989, 58.1-4018, 63.2-525, 63.2-1719 and 63.2-1726 of the Code of Virginia, and to amend the Code of Virginia by adding in Article 4 of Chapter 4 of Title 18.2 a section numbered 18.2-51.01, to amend the Code of Virginia by adding sections numbered 18.2-58.01 through 18.2-58.013, by adding sections numbered 18.2-77.1 through 18.2-77.9, by adding sections numbered 18.2-89.1 through 18.2-89.16, by adding sections numbered 18.2-95.1 through 18.2-95.7 and by adding a section numbered 18.2-137.01 as follows:

§ 8.01-44.4. Action for shoplifting and employee theft.

A. A merchant may recover a civil judgment against any adult or emancipated minor who shoplifts from that merchant for two times the actual cost of the merchandise to the merchant, but in no event an amount less than ~~fifty dollars~~*$50*. However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than $350.

B. A merchant may recover a civil judgment against any person who commits employee theft for two times the actual cost of the merchandise to the merchant, but in no event an amount less than ~~fifty dollars~~*$50*. However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than $350.

C. The prevailing party in any action brought pursuant to this section shall be entitled to reasonable attorneys' fees and costs not to exceed $150.

D. A conviction of or a plea of guilty to a violation of any other statute is not a prerequisite to commencement of a civil action pursuant to this section or enforcement of a judgment. No action may be initiated under this section if any criminal action has been initiated against the perpetrator for the alleged offense under §§ 18.2-95~~,~~ *through* 18.2-96, 18.2-102.1, or § 18.2-103 or any other criminal offense defined under subsection F. However, nothing herein shall preclude a merchant from nonsuiting the civil action brought pursuant to this section and proceeding criminally under §§ 18.2-95~~,~~ *through* 18.2-96, 18.2-102.1 or § 18.2-103 or any other criminal offense defined under subsection F.

E. Prior to the commencement of any action under this section, a merchant may demand, in writing, that an individual who may be civilly liable under this section make appropriate payment to the merchant in consideration for the merchant's agreement not to commence any legal action under this section.

F. For purposes of this section:

"Employee theft" means the removal of any merchandise or cash from the premises of the merchant's establishment or the concealment of any merchandise or cash by a person employed by a merchant without the consent of the merchant and with the purpose or intent of appropriating the merchandise or cash to the employee's own use without full payment.

"Shoplift" means any one or more of the following acts committed by a person without the consent of the merchant and with the purpose or intent of appropriating merchandise to that person's own use without payment, obtaining merchandise at less than its stated sales price, or otherwise depriving a merchant of all or any part of the value or use of merchandise: (i) removing any merchandise from the premises of the merchant's establishment; (ii) concealing any merchandise; (iii) substituting, altering, removing, or disfiguring any label or price tag; (iv) transferring any merchandise from a container in which that merchandise is displayed or packaged to any other container; (v) disarming any alarm tag attached to any merchandise; or (vi) obtaining or attempting to obtain possession of any merchandise by charging that merchandise to another person without the authority of that person or by charging that merchandise to a fictitious person.

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" means:

1. A violation or attempted violation of §§ 18.2-63, 18.2-64.1, *former* 18.2-67.2:1, *18.2-89.2, 18.2-89.3, 18.2-89.7, 18.2-89.8, 18.2-89.12 or § 18.2-89.13 with the intent to commit rape, former §* 18.2-90 with the intent to commit rape, § 18.2-374.1 or subsection D of § 18.2-374.1:1; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) subsection C of § 18.2-67.5 or (iii) § 18.2-386.1;

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

3. A violation of Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code; or

4. A "sexually violent offense."

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

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

2. Sections 18.2-63, 18.2-64.1, *former* 18.2-67.2:1, *18.2-89.2, 18.2-89.3, 18.2-89.7, 18.2-89.8, 18.2-89.12 or § 18.2-89.13 with the intent to commit rape, former* § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) or (iii) of § 18.2-48, §§ 18.2-361, 18.2-366, or § 18.2-374.1. Conviction of an offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted of any two or more such offenses, provided that person had been at liberty between such convictions.

B. "Offense for which registration is required" and "sexually violent offense" shall also include any similar offense under the laws of the United States or any political subdivision thereof.

§ 9.1-908. Duration of registration requirement.

Any person required to register or reregister shall be required to register for a period of 10 years from the date of initial registration, except that any person who has been convicted of (i) any sexually violent offense, or (ii) *former* § 18.2-67.2:1 shall have a continuing duty to reregister for life.

Any period of confinement in a federal, state or local correctional facility, hospital or any other institution or facility during the otherwise applicable 10-year period shall toll the registration period and the duty to reregister shall be extended. Persons confined in a federal, state, or local correctional facility shall not be required to reregister until released from custody.

§ 9.1-910. Removal of name and information from Registry.

A. Any person required to register, other than a person who has been convicted of any (i) sexually violent offense, (ii) two or more offenses for which registration is required or (iii) a violation of *former*

§ 18.2-67.2:1, may petition the circuit court in which he was convicted or the circuit court in the jurisdiction where he then resides for removal of his name and all identifying information from the Registry. A petition may not be filed earlier than 10 years after the date of initial registration. The court shall hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. If, after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at least 24 months from the date of the denial to file a new petition for removal from the Registry.

B. The State Police shall remove from the Registry the name of any person and all identifying information upon receipt of an order granting a petition pursuant to subsection A or at the end of the period for which the person is required to register under § 9.1-908.

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

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

In addition to any other fee prescribed by this section, a fee of $20 shall be taxed as costs whenever a defendant fails to appear, unless, after a hearing requested by such person, good cause is shown for such failure to appear. No defendant with multiple charges arising from a single incident shall be taxed the fee provided in this section more than once for a single appearance or trial in absence related to that incident. A defendant with charges which arise from separate incidents shall be taxed a fee for each incident even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

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

B. In misdemeanors tried in district court, except for those proceedings provided for in subsection C, there shall be assessed as court costs a fixed fee of $59. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund)(.593220);
2. Virginia Crime Victim-Witness Fund (.050847);
3. Regional Criminal Justice Training Academies Fund (.016949);
4. Courthouse Construction/Maintenance Fund (.033898);
5. Criminal Injuries Compensation Fund (.101694);
6. Intensified Drug Enforcement Jurisdiction Fund (.067796); and
7. Sentencing/supervision fee (General Fund) (.135593)

C. In criminal actions and proceedings in district court for a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, there shall be assessed as court costs a fixed fee of $134. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund)(.261194);
2. Virginia Crime Victim-Witness Fund (.022388);
3. Regional Criminal Justice Training Academies Fund (.007462);
4. Courthouse Construction/Maintenance Fund (.014925);
5. Criminal Injuries Compensation Fund (.044776);
6. Intensified Drug Enforcement Jurisdiction Fund (.029850);
7. Drug Offender Assessment Fund(.559701); and
8. Forensic laboratory fee and sentencing/supervision fee (General Fund) (.059701)

D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of $49. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.795918);
2. Virginia Crime Victim-Witness Fund (.061224);
3. Regional Criminal Justice Training Academies Fund (.020408);
4. Courthouse Construction/Maintenance Fund (.040816); and
5. Intensified Drug Enforcement Jurisdiction Fund (.081632).

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated in need of supervision or delinquent. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated in need of supervision or delinquent.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the court. The intake officer may defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake officer may proceed informally only if the juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents, guardian or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian or other person standing in loco parentis participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer shall file the petition.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon

community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241 will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law, or (iv) family abuse has occurred and a protective order is being sought pursuant to §§ 16.1-253.1, 16.1-253.4 or § 16.1-279.1. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition.

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. After a petition is filed alleging that a juvenile committed an act which would be a crime if committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ ~~18.2-77~~ *18.2-77.1* et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through ~~18.2-93~~ *18.2-89.16*; or

9. Robbery pursuant to § 18.2-58.

Promptly after filing a petition the intake officer shall also mail notice, by first-class mail, to the superintendent. The failure to provide information regarding the school in which the juvenile who is the

subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations or animal control violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision H of § 16.1-241.

3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

§ 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

A. Except as provided in subsections B and C, if a juvenile ~~fourteen~~ *14* years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent, guardian, legal custodian or other person standing in loco parentis; or attorney;

2. The juvenile court finds that probable cause exists to believe that the juvenile committed the delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an adult;

3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the evidence; and

4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

a. The juvenile's age;

b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than ~~twenty~~ *20* years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;

d. The appropriateness and availability of the services and dispositional alternatives in both the

criminal justice and juvenile justice systems for dealing with the juvenile's problems;

e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional maturity; and

j. The juvenile's physical condition and physical maturity.

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the factors specified in subdivision A 4 of this section.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~fourteen~~ *14* years of age or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40, or aggravated malicious wounding in violation of § 18.2-51.2.

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~fourteen~~ *14* years of age or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of § 18.2-54.1, adulteration of products in violation of § 18.2-54.1, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

If the court does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

If the court finds that the juvenile was not ~~fourteen~~ *14* years of age or older at the time of the alleged commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have not been met, the case shall proceed as otherwise provided for by law.

E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

§ 16.1-301. Confidentiality of law-enforcement records; disclosures to school principal.

A. The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle laws committed by juveniles. Such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public unless a juvenile 14 years of age or older is charged with a violent juvenile felony as specified in subsections B and C of § 16.1-269.1.

B. Notwithstanding any other provision of law, the chief of police or sheriff of a jurisdiction or his designee may disclose, for the protection of the juvenile, his fellow students and school personnel, to the school principal that a juvenile is a suspect in or has been charged with (i) a violent juvenile felony, as specified in subsections B and C of § 16.1-269.1; (ii) a violation of any of the provisions of Article 1

(§ 18.2-77.*1* et seq.) of Chapter 5 of Title 18.2; or (iii) a violation of law involving any weapon as described in subsection A of § 18.2-308. If a chief of police, sheriff or a designee has disclosed to a school principal pursuant to this section that a juvenile is a suspect in or has been charged with a crime listed above, upon a court disposition of a proceeding regarding such crime in which a juvenile is adjudicated delinquent, convicted, found not guilty or the charges are reduced, the chief of police, sheriff or a designee shall, within 15 days of the expiration of the appeal period, if there is no notice of appeal, provide notice of the disposition ordered by the court to the school principal to whom disclosure was made. If the court defers disposition or if charges are withdrawn, dismissed or nolle prosequi, the chief of police, sheriff or a designee shall, within 15 days of such action provide notice of such action to the school principal to whom disclosure was made. If charges are withdrawn in intake or handled informally without a court disposition or if charges are not filed within 90 days of the initial disclosure, the chief of police, sheriff or a designee shall so notify the school principal to whom disclosure was made.

C. Inspection of law-enforcement records concerning juveniles shall be permitted only by the following:

1. A court having the juvenile currently before it in any proceeding;

2. The officers of public and nongovernmental institutions or agencies to which the juvenile is currently committed, and those responsible for his supervision after release;

3. Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;

4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;

5. The probation and other professional staff of a court in which the juvenile is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;

6. The juvenile, parent, guardian or other custodian and counsel for the juvenile by order of the court; and

7. As provided in §§ 19.2-389.1 and 19.2-390.

D. The police departments of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, current information on juvenile arrests. The information exchanged shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency.

E. Nothing in this section shall prohibit the exchange of other criminal investigative or intelligence information among law-enforcement agencies.

§ 17.1-275.1. Fixed felony fee.

Upon conviction of any and each felony charge or upon a deferred disposition of proceedings in circuit court in the case of any and each felony disposition deferred pursuant to the terms and conditions of §§ 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, ~~18.2-67.2:1~~, or § 18.2-251, there shall be assessed as court costs a fee of $350, to be known as the fixed felony fee.

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

1. Sentencing/supervision fee (General Fund) (.5041143);

2. Forensic science fund (.1107143);

3. Court reporter fund (.0950571);

4. Witness expenses/expert witness fund (.0057143);

5. Virginia Crime Victim-Witness Fund (.0085714);

6. Intensified Drug Enforcement Jurisdiction Fund (.0114286);

7. Criminal Injuries Compensation Fund (.0857143);

8. Commonwealth's attorney fund (state share) (.0214286);

9. Commonwealth's attorney fund (local share) (.0214286);

10. Regional Criminal Justice Academy Training Fund (.0028571);

11. Warrant fee (.0342857);

12. Courthouse construction/maintenance fund (.0057143); and

13. Clerk of the circuit court (.0929714).

§ 17.1-275.2. Fixed fee for felony reduced to misdemeanor.

In circuit court, upon the conviction of a person of any and each misdemeanor reduced from a felony charge, or upon a deferred disposition of proceedings in the case of any and each misdemeanor reduced from a felony charge and deferred pursuant to the terms and conditions of §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, ~~18.2-67.2:1,~~ or § 19.2-303.2, there shall be assessed as court costs a fee of $202, to be known as the fixed fee for felony reduced to misdemeanor. However, this section shall not apply

to those proceedings provided for in § 17.1-275.8.

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

1. Sentencing/supervision fee (General Fund) (.1904950);
2. Forensic science fund (.1918317);
3. Court reporter fund (.1647030);
4. Witness expenses/expert witness fund (.0099010);
5. Virginia Crime Victim-Witness Fund (.0148515);
6. Intensified Drug Enforcement Jurisdiction Fund (.0198020);
7. Criminal Injuries Compensation Fund (.0990099);
8. Commonwealth's attorney fund (state share) (.0371287);
9. Commonwealth's attorney fund (local share) (.0371287);
10. Regional Criminal Justice Academy Training Fund (.0049505);
11. Warrant fee (.0594059);
12. Courthouse construction/maintenance fund (.0099010); and
13. Clerk of the circuit court (.1608911).

§ 17.1-275.7. Fixed misdemeanor fee.

In circuit court, upon (i) conviction of any and each misdemeanor, not originally charged as a felony, (ii) a deferred disposition of proceedings in the case of any and each misdemeanor not originally charged as a felony and deferred pursuant to the terms and conditions of §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, ~~18.2-67.2:1,~~ or § 19.2-303.2, or (iii) any and each conviction of a traffic infraction or referral to a driver improvement clinic or traffic school in lieu of a finding of guilt for a traffic infraction, there shall be assessed as court costs a fee of $70, to be known as the fixed misdemeanor fee. However, this section shall not apply to those proceedings provided for in § 17.1-275.8. This fee shall be in addition to any fee assessed in the district court.

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

1. Sentencing/supervision fee (General Fund) (.0142857);
2. Witness expenses/expert witness fee (General Fund) (.0285714);
3. Virginia Crime Victim-Witness Fund (.0428571);
4. Intensified Drug Enforcement Jurisdiction Fund (.0571429);
5. Criminal Injuries Compensation Fund (.2857143);
6. Commonwealth's Attorney Fund (state share) (.0357143);
7. Commonwealth's Attorney Fund (local share) (.0357143);
8. Regional Criminal Justice Academy Training Fund (.0142857);
9. Warrant fee, as prescribed by § 17.1-272 (.1714286);
10. Courthouse Construction/Maintenance Fund (.0285714); and
11. Clerk of the circuit court (.2857143).

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

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

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

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100

percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than ~~forty~~ *40* years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more;

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

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2 or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than ~~forty~~ *40* years, and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of ~~forty~~ *40* years or more.

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

C. For purposes of this chapter, violent felony offenses shall include any violation of §§ 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or § 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or § 18.2-41; any Class 5 felony violation of § 18.2-47; any felony violation of §§ 18.2-48, 18.2-48.1 or § 18.2-49; any violation of §§ 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or § 18.2-55; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or § 18.2-58.1; any felony violation of § 18.2-60.1 or § 18.2-60.3; any violation of §§ 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, *former* 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or § 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § *former* 18.2-77; any Class 3 felony violation of *former* § 18.2-79; any Class 3 felony violation of *former* § 18.2-80; *any violation of §§ 18.2-77.3, 18.2-77.4, or § 18.2-77.5;* any violation of §§ 18.2-89*, 18.2-89.1 through 18.2-89.16, former §§* 18.2-90*,* 18.2-91*,* 18.2-92 or § 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any violation of subsection B of § 18.2-280; any violation of §§ 18.2-281, 18.2-286.1, 18.2-289 or § 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of subsection A of § 18.2-300; any felony violation of §§ 18.2-308.1 and 18.2-308.2; any violation of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or § 18.2-312; any violation of subdivision (2) or (3) of § 18.2-355; any violation of § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of §§ 18.2-368, 18.2-370 or § 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or § 18.2-406; any violation of §§ 18.2-408, 18.2-413, 18.2-414 or § 18.2-433.2; any felony violation of §§ 18.2-460, 18.2-474.1 or § 18.2-477.1; any violation of §§ 18.2-477, 18.2-478, 18.2-480 or § 18.2-485; any violation of § 53.1-203; or any conspiracy or attempt to commit any offense specified in this subsection, and any substantially similar offense under the laws of any state, the District of Columbia, the United States or its territories.

§ 18.2-9. Classification of criminal offenses.

~~(1)~~ *A.* Felonies are classified, for the purposes of punishment and sentencing, into ~~six~~ *seven* classes:

Capital felony

~~(a)~~ Class 1 felony

~~(b)~~ Class 2 felony

~~(c)~~ Class 3 felony

~~(d)~~ Class 4 felony

~~(e)~~ Class 5 felony

~~(f)~~ Class 6 felony.

~~(2)~~ *B.* Misdemeanors are classified, for the purposes of punishment and sentencing, into four classes:

~~(a)~~ Class 1 misdemeanor

~~(b)~~ Class 2 misdemeanor

~~(c)~~ Class 3 misdemeanor

~~(d)~~ Class 4 misdemeanor.

§ 18.2-10. Punishment for conviction of felony.

The authorized punishments for conviction of a felony are:

(a) For ~~Class 1~~ *capital* felonies, death, if the person so convicted was 16 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than $100,000. If the person was under 16 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than $100,000.

(b) For Class ~~2~~ *1* felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than $100,000.

(b1) For Class 2 felonies, a term of imprisonment of not less than five years nor more than 40 years and, subject to subdivision (g), a fine of not more than $100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than $100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than $100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 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 12 months and a fine of not more than $2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in ~~Class 1~~ *Capital* felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

§ 18.2-23. Conspiring to trespass or commit larceny.

A. ~~If any~~ *Any* person ~~shall conspire, confederate or combine~~ *who conspires, confederates, or combines* with another or others in the Commonwealth to go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, having knowledge that any of them have been forbidden, either orally or in writing, to do so by the owner, lessee, custodian or other person lawfully in charge thereof, or having knowledge that any of them have been forbidden to do so by a sign or signs posted on such lands, buildings, premises or part, portion or area thereof at a place or places where it or they may reasonably be seen, ~~he shall be deemed~~ *is* guilty of a Class 3 misdemeanor.

B. ~~If any~~ *Any* person ~~shall conspire, confederate or combine~~ *who conspires, confederates, or combines* with another or others in the Commonwealth to commit larceny or counsel, assist, aid or abet another in the performance of a larceny, where the aggregate value of the goods or merchandise involved is more than ~~$200~~ *500*, ~~he~~ is guilty of ~~a felony punishable by confinement in a state correctional facility for not less than one year nor more than 20 years~~ *grand larceny*. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise. A violation of this subsection constitutes a separate and distinct felony.

C. Jurisdiction for the trial of any person charged under this section shall be in the county or city wherein any part of such conspiracy is planned, or in the county or city wherein any act is done toward the consummation of such plan or conspiracy.

§ 18.2-25. Attempts to commit capital offenses; how punished.

~~If any~~ *Any* person *who* attempts to commit an offense which is punishable with death, ~~he shall be~~ *is* guilty of a Class ~~2~~ *1* felony.

§ 18.2-31. Capital murder defined; punishment.

The following offenses shall constitute capital murder, punishable as a ~~Class 1~~ *Capital* felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration;

6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in § 9.1-101 or any law-enforcement officer of another state or the United States having the power to arrest for a felony under the laws of such state or the United States, when such killing is for the purpose of interfering with the performance of his official duties;

7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction;

8. The willful, deliberate, and premeditated killing of more than one person within a three-year period;

9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such killing is for the purpose of furthering the commission or attempted commission of such violation;

10. The willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined in ~~subsection I of~~ § 18.2-248;

11. The willful, deliberate and premeditated killing of a pregnant woman by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth;

12. The willful, deliberate and premeditated killing of a person under the age of ~~fourteen~~ *14* by a person age ~~twenty-one~~ *21* or older; and

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

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

§ 18.2-32. First and second degree murder defined; punishment.

Murder, other than capital murder, by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit, arson, rape, forcible sodomy, inanimate or animate object sexual penetration, robbery, burglary or abduction, except as provided in § 18.2-31, is murder ~~of~~ *in* the first degree, ~~punishable as~~ a Class ~~2~~ *1* felony.

All murder other than capital murder and murder in the first degree is murder of the second degree and is ~~punishable by confinement in a state correctional facility for not less than five nor more than forty years~~ *a Class 2 felony*.

§ 18.2-46.5. Committing, conspiring and aiding and abetting acts of terrorism prohibited; penalty.

A. Any person who commits or conspires to commit, or aids and abets the commission of an act of terrorism, as defined in § 18.2-46.4, is guilty of a Class ~~2~~ *1* felony if the base offense of such act of terrorism may be punished by life imprisonment, or a term of imprisonment of not less than ~~twenty~~ *20* years.

B. Any person who commits, conspires to commit, or aids and abets the commission of an act of terrorism, as defined in § 18.2-46.4, is guilty of a Class 3 felony if the maximum penalty for the base offense of such act of terrorism is a term of imprisonment or incarceration in jail of less than ~~twenty~~ *20* years.

§ 18.2-46.6. Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device prohibited; penalty.

A. Any person who, with the intent to commit an act of terrorism, possesses, uses, sells, gives, distributes or manufactures (i) a weapon of terrorism or (ii) a "fire bomb," "explosive material," or "device," as those terms are defined in § 18.2-85, is guilty of a Class ~~2~~ *1* felony.

B. Any person who, with the intent to commit an act of terrorism, possesses, uses, sells, gives, distributes or manufactures any device or material that by its design, construction, content or characteristics appears to be or appears to contain a (i) weapon of terrorism or (ii) a "fire bomb," "explosive material," or "device," as those terms are defined in § 18.2-85, but that is an imitation of any

such weapon of terrorism, "fire bomb," "explosive material," or "device" is guilty of a Class 3 felony.

C. Any person who, with the intent to (i) intimidate the civilian population, (ii) influence the conduct or activities of the government of the United States, a state or locality through intimidation, (iii) compel the emergency evacuation of any place of assembly, building or other structure or any means of mass transportation, or (iv) place any person in reasonable apprehension of bodily harm, uses, sells, gives, distributes or manufactures any device or material that by its design, construction, content or characteristics appears to be or appears to contain a weapon of terrorism, but that is an imitation of any such weapon of terrorism is guilty of a Class 6 felony.

§ 18.2-47. Abduction and kidnapping defined; punishment.

A. Any person, who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes the person of another, with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction"; but the provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code. *A violation of this subsection is abduction in the third degree, a Class 5 felony.*

B. Abduction in the first degree is a Class 1 felony.

Abduction in the second degree is a Class 3 felony.

Abduction for which no punishment is otherwise prescribed ~~shall be punished as~~ *is abduction in the third degree,* a Class 5 felony.

~~B~~ *C.* If such offense is committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, the offense ~~shall be~~ *is* a Class 1 misdemeanor in addition to being punishable as contempt of court.

D. However, such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent, ~~shall be~~ *is* a Class 6 felony in addition to being punishable as contempt of court.

§ 18.2-48. Abduction with intent to extort money or for immoral purpose.

Abduction (i) with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, or (iii) of any child under ~~sixteen~~ *16* years of age for the purpose of concubinage or prostitution, ~~shall be a~~ *is abduction in the first degree, a* Class ~~2~~ *1* felony.

§ 18.2-48.1. Abduction by prisoners; penalty.

Any prisoner in a state, local or community correctional facility, or in the custody of an employee thereof, or who has escaped from any such facility or from any person in charge of such prisoner, who abducts or takes any person hostage ~~shall be~~ *is* guilty of *abduction in the second degree,* a Class 3 felony.

§ 18.2-49. Threatening abduction.

Any person who ~~(1)~~ threatens~~, or attempts,~~ to abduct any other person with intent to extort money, or pecuniary benefit, or ~~(2) assists or aids in the abduction of, or threatens to abduct, any person~~ with the intent to defile such person, or ~~(3) assists or aids in the abduction of, or~~ threatens to abduct, any female under ~~sixteen~~ *16* years of age for the purpose of concubinage or prostitution, ~~shall be~~ *is* guilty of a Class 5 felony.

§ 18.2-49.1. Violation of court order regarding custody and visitation; penalty.

A. Any person who knowingly, wrongfully and intentionally withholds a child from either of a child's parents or other legal guardian in a clear and significant violation of a court order respecting the custody or visitation of such child, provided such child is withheld outside of the Commonwealth, is guilty of a Class 6 felony.

B. Any person who knowingly, wrongfully and intentionally engages in conduct that constitutes a clear and significant violation of a court order respecting the custody or visitation of a child is guilty of a Class 3 misdemeanor upon conviction of a first offense.

C. Any person who commits a second violation of this section within 12 months of a first conviction is guilty of a Class 2 misdemeanor, and

~~any~~ *D. Any* person who commits a third violation ~~occurring~~ *of this section* within 24 months of the first conviction is guilty of a Class 1 misdemeanor.

§ 18.2-51. Shooting, stabbing, etc., with intent to maim, kill, etc.

~~If any~~ *Any* person *who* maliciously ~~shoot, stab, cut, or wound~~ *shoots, stabs, cuts or wounds* any person or by any means ~~cause~~ *causes* him bodily injury, with the intent to maim, disfigure, disable, or kill~~, he shall~~, *is,* except where it is otherwise provided, ~~be~~ guilty of *assault and battery in the third degree,* a Class 3 felony. If such act ~~be~~ *is* done unlawfully but not maliciously, with the intent aforesaid, the offender ~~shall be~~ *is* guilty of *assault and battery in the sixth degree,* a Class 6 felony.

§ 18.2-51.01. Degrees of assault and battery; how punished.

Assault and battery in the first degree is a Class 1 felony.
Assault and battery in the second degree is a Class 2 felony.
Assault and battery in the third degree is a Class 3 felony.
Assault and battery in the fourth degree is a Class 4 felony.
Assault and battery in the fifth degree is a Class 5 felony.
Assault and battery in the sixth degree is a Class 6 felony.

§ 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~~ *Any* person *who* 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~~ *is* guilty of ~~a felony punishable by imprisonment for a period of not less than five years nor more than thirty years and, subject to subdivision (g) of § 18.2-10, a fine of not more than $100,000~~ *assault and battery in the second degree, a Class 2 felony*. Upon conviction, the sentence of such person shall include a mandatory, minimum term of imprisonment of two years.

~~If any~~ *Any* person *who* 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~~ *is* guilty of *assault and battery in the sixth degree,* 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 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.

§ 18.2-51.2. Aggravated malicious wounding; penalty.

A. ~~If any~~ *Any* person *who* maliciously shoots, stabs, cuts or wounds any other person, or by any means causes bodily injury, with the intent to maim, disfigure, disable or kill, he ~~shall be~~ *is* guilty of *assault and battery in the first degree,* a Class ~~2~~ *1* felony, if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment.

B. ~~If any~~ *Any* person *who* maliciously shoots, stabs, cuts or wounds any other woman who is pregnant, or by any other means causes bodily injury, with the intent to maim, disfigure, disable or kill the pregnant woman or to cause the involuntary termination of her pregnancy, ~~he shall be~~ *is* guilty of *assault and battery in the first degree,* a Class ~~2~~ *1* felony, if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment.

C. For purposes of this section, the involuntary termination of a woman's pregnancy shall be deemed a severe injury and a permanent and significant physical impairment.

§ 18.2-51.3. Prohibition against reckless endangerment of others by throwing objects from places higher than one story; penalty.

A. It shall be unlawful for any person, with the intent to cause injury to another, to intentionally throw from a balcony, roof top, or other place more than one story above ground level any object capable of causing any such injury.

B. A violation of this section ~~shall be punishable as~~ *is assault and battery in the sixth degree,* a Class 6 felony.

§ 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated.

A. Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local

ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment ~~shall be~~ *is* guilty of *assault and battery in the sixth degree,* a Class 6 felony. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

B. The provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall apply, mutatis mutandis, upon arrest for a violation of this section.

§ 18.2-52. Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire.

~~If any~~ *Any* person *who* maliciously causes any other person bodily injury by means of any acid, lye or other caustic substance or agent or *by* use of any explosive or fire, ~~he shall be~~ *is* guilty of ~~a felony and shall be punished by confinement in a state correctional facility for a period of not less than five years nor more than thirty years~~ *assault and battery in the second degree, a Class 2 felony*. If such act is done unlawfully but not maliciously, the offender ~~shall be~~ *is* guilty of *assault and battery in the sixth degree,* a Class 6 felony.

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

A. Any person who possesses, with the intent thereby to injure another, an infectious biological substance or radiological agent is guilty of *assault and battery in the fifth degree,* a Class 5 felony.

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

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

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

§ 18.2-53. Shooting, etc., in committing or attempting a felony.

~~If any~~ *Any* person *who,* in the commission of, or attempt to commit, *a* felony, unlawfully ~~shoot, stab, cut or wound~~ *shoots, stabs, cuts or wounds* another person ~~he shall be~~ *is* guilty of *assault and battery in the sixth degree,* a Class 6 felony.

§ 18.2-54.1. Attempts to poison.

~~If any~~ *Any* person *who* administers or attempts to administer any poison or destructive substance in food, drink, prescription or over-the-counter medicine, or otherwise, or poisons any spring, well, or reservoir of water with intent to kill or injure another person, ~~he shall be~~ *is* guilty of *assault and battery in the third degree,* a Class 3 felony.

§ 18.2-54.2. Adulteration of food, drink, drugs, cosmetics, etc.; penalty.

Any person who adulterates or causes to be adulterated any food, drink, prescription or over-the-counter medicine, cosmetic or other substance with the intent to kill or injure any individual who ingests, inhales or uses such substance ~~shall be~~ *is* guilty of *assault and battery in the third degree,* a Class 3 felony.

§ 18.2-55. Bodily injuries caused by prisoners, state juvenile probationers and state and local adult probationers or adult parolees.

A. It shall be unlawful for a person confined in a state, local or regional correctional facility as defined in § 53.1-1; in a secure facility or detention home as defined in § 16.1-228 or in any facility designed for the secure detention of juveniles; or while in the custody of an employee thereof to knowingly and willfully inflict bodily injury on:

1. An employee thereof, ~~or~~

2. Any other person lawfully admitted to such facility, except another prisoner or person held in legal custody, ~~or~~

3. Any person who is supervising or working with prisoners or persons held in legal custody, or

4. Any such employee or other person while such prisoner or person held in legal custody is committing any act in violation of § 53.1-203.

B. It shall be unlawful for an accused, probationer or parolee under the supervision of, or being investigated by, (i) a probation or parole officer whose powers and duties are defined in § 16.1-237 or § 53.1-145, (ii) a local pretrial services officer associated with a program established pursuant to Article 5 (§ 19.2-152.2) of Chapter 9 of Title 19.2, or (iii) a local probation officer associated with a program established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, to knowingly and willfully inflict bodily injury on such officer while he is in the performance of his duty, knowing or having reason to know that the officer is engaged in the performance of his duty.

Any person ~~violating~~ *who violates* any provision of this section is guilty of *assault and battery in*

the fifth degree, a Class 5 felony.

§ 18.2-57. Assault and battery.

A. Any person who commits a simple assault or assault and battery ~~shall be~~ *is* 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.

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~~ *is* guilty of *assault and battery in the sixth degree,* 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.

C. In addition, ~~if~~ any person *who* 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~~ *is* guilty of *assault and battery in the sixth degree,* a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory, minimum term of confinement for 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 *who* 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~~ *is* 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. 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.

§ 18.2-57.02. Disarming a law-enforcement or correctional officer; penalty.

Any person who knows or has reason to know a person is a law-enforcement officer as defined in

§ 18.2-57, a correctional officer as defined in § 53.1-1, or a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department, who is engaged in the performance of his duties as such and, with the intent to impede or prevent any such person from performing his official duties, knowingly and without the person's permission removes a chemical irritant weapon or impact weapon from the possession of the officer or deprives the officer of the use of the weapon is guilty of a Class 1 misdemeanor. However, if the weapon removed or deprived in violation of this section is the officer's firearm or stun weapon, he ~~shall be~~ *is* guilty of *assault and battery in the sixth degree,* a Class 6 felony. A violation of this section shall constitute a separate and distinct offense.

§ 18.2-57.2. Assault and battery against a family or household member.

A. Any person who commits an assault and battery against a family or household member ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

B. On a third or subsequent conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that (i) such person has been previously convicted twice of assault and battery against a family or household member, or of a similar offense under the law of any other jurisdiction, within ~~ten~~ *10* years of the third or subsequent offense, and (ii) each such assault and battery occurred on different dates, such person ~~shall be~~ *is* guilty of *assault and battery in the sixth degree,* a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in § 16.1-228 applies to this section.

§ 18.2-58. Robbery; defined.

~~If any~~ *Any* person ~~commit~~ *who commits* robbery by partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever, ~~he shall be~~ *is* guilty of ~~a felony and shall be punished by confinement in a state correctional facility for life or any term not less than five years~~ *robbery.*

Robbery committed while armed with a deadly weapon and resulting in serious bodily injury to another is robbery in the first degree, a Class 1 felony.

All other robbery is robbery in the second degree, a Class 2 felony.

As used in this article:

"Armed with a deadly weapon" means the possession of any weapon described in subsection A of § 18.2-308 or any other instrumentality whatsoever which, under the circumstances in which it is used, attempted to be used or threatened to be used, would likely cause death or serious bodily injury to a human being.

"Serious bodily injury" means bodily injury that involves (i) a substantial risk of death, (ii) physical pain that is chronic or experienced over a protracted period of time, (iii) protracted disfigurement, or (iv) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

§ 18.2-58.1. Carjacking; defined and degrees.

A. ~~Any person who commits carjacking, as herein defined, shall be guilty of a felony punishable by imprisonment for life or a term not less than fifteen years~~

Carjacking in the first degree is a Class 1 felony.

Carjacking in the second degree is a Class 2 felony.

B. As used in this section, "carjacking" means the intentional seizure or seizure of control of a motor vehicle of another with intent to permanently or temporarily deprive another in possession or control of the vehicle of that possession or control by means of partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever. "Motor vehicle" shall have the same meaning as set forth in § 46.2-100.

C. *Carjacking committed while armed with a deadly weapon and resulting in serious injury to another is carjacking in the first degree, a Class 1 felony.*

All other carjacking is carjacking in the second degree, a Class 2 felony.

D. The provisions of this section shall not preclude the applicability of any other provision of the criminal law of the Commonwealth which may apply to any course of conduct which violates this section.

§ 18.2-67.1. Forcible sodomy.

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

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

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

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

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

C. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than five years. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation of subsection B may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

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

§ 18.2-67.2. Object sexual penetration; definitions and penalties.

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

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

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

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

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

C. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than five years. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation of subsection B may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

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

§ 18.2-67.10. General definitions.

As used in this article:

1. "Complaining witness" means the person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, ~~marital sexual assault,~~ aggravated sexual battery, or sexual battery.

2. "Intimate parts" means the genitalia, anus, groin, breast, or buttocks of any person.

3. "Mental incapacity" means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.

4. "Physical helplessness" means unconsciousness or any other condition existing at the time of an offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.

5. The complaining witness's "prior sexual conduct" means any sexual conduct on the part of the complaining witness which took place before the conclusion of the trial, excluding the conduct involved in the offense alleged under this article.

6. "Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;

b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or

c. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

§ 18.2-77.1. Definitions.

As used in this article, unless the context requires otherwise:

"Arson" means to maliciously or with the intent to defraud an insurance company or other person, (i) burn or by use of any explosive device or substance destroy property, in whole or in part, or cause property to be burned or destroyed, (ii) aid, counsel or procure the burning or destroying of property, or (iii) set fire to anything, or aid, counsel or procure the setting of fire to anything, by the burning whereof some other property is burned. Property includes the property of the alleged perpetrator or another.

"Church" shall be defined as in § 18.2-127.

"Dwelling" includes a dwelling house, an adjoining outhouse, a manufactured home used as a dwelling, a nonadjoining outhouse where a person usually lodges at night, a hotel, hospital, mental health facility, correctional facility or other house in which persons usually dwell or lodge and any railroad car or any automobile, boat, vessel, rivercraft, truck or trailer, if such railroad car, automobile, boat, vessel, rivercraft, truck or trailer is used as a dwelling or place of human habitation.

"Serious bodily injury" means bodily injury that involves (i) a substantial risk of death, (ii) physical pain that is chronic or experienced over a protracted period of time, (iii) protracted disfigurement, or (iv) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

§ 18.2-77.2. Arson; how punished.

Arson in the first degree is a Class 1 felony.

Arson in the second degree is a Class 2 felony.

Arson in the third degree is a Class 3 felony.

Arson in the fourth degree is a Class 4 felony.

§ 18.2-77.3. Arson resulting in serious bodily injury.

Arson of any dwelling, church, building erected for public use, other building, bridge, lock, dam or other structure is arson in the first degree, a Class 1 felony, if it results in serious bodily injury to another.

§ 18.2-77.4. Arson of an occupied dwelling or church with no serious bodily injury.

Arson of an occupied dwelling, an occupied church or occupied building owned or leased by a church that is immediately adjacent to a church is arson in the second degree, a Class 2 felony, if there is no serious bodily injury to another.

§ 18.2-77.5. Arson of building erected for public use; person within; no serious bodily injury.

Arson of any building erected for public use, other building, bridge, lock, damn or other structure that is not a dwelling or church, at a time when any person is therein, is arson in the third degree, a Class 3 felony, if there is no serious bodily injury to another.

§ 18.2-77.6. Arson of building erected for public use; no person within; no serious bodily injury.

Arson of any building erected for public use other than a dwelling or church, at a time when no person is within, is arson in the fourth degree, a Class 4 felony, if there is no serious bodily injury to

another.

§ 18.2-77.7. Arson of an unoccupied dwelling.

Arson of an unoccupied dwelling or unoccupied church or unoccupied building owned or leased by a church that is immediately adjacent to a church is arson in the fourth degree, a Class 4 felony, if there is no serious bodily injury.

§ 18.2-77.8. Arson of a building, other structure, etc., when no person is within.

A. Arson of a building, bridge, lock, damn or other structure at a time when no person is within or thereon, which is not punishable under any other section of this article, is arson in the fourth degree, a Class 4 felony, if the structure, with the property therein, is valued at $500 or more.

B. Arson of a building, bridge, lock, damn or other structure at a time when no person is within or thereon, which is not punishable under any other section of this chapter, is a Class 1 misdemeanor if the structure, with the property therein, is valued at less than $500.

§ 18.2-77.9. Arson of personal property; standing grain, etc.

A. Arson of any personal property, standing grain or other crop is arson in the fourth degree, a Class 4 felony, if the value of the property burned or destroyed is $500 or more.

B. Arson of any personal property, standing grain or other crop is a Class 1 misdemeanor if the value of the property burned or destroyed is less than $500.

§ 18.2-89. Burglary; how defined; other definitions.

~~If any person break and enter the dwelling house of another in the nighttime with intent to commit a felony or any larceny therein, he shall be~~ *Any person who (i) in the nighttime enters a dwelling or other structure without breaking with intent to commit any felony, larceny or assault and battery, (ii) at any time breaks and enters or enters and conceals himself in a dwelling or other structure with intent to commit any felony, larceny or assault and battery, or (iii) at any time breaks and enters an occupied dwelling with intent to commit any misdemeanor other than assault and battery or trespass is* guilty of burglary~~, punishable as a Class 3 felony; provided, however, that if such person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony~~.

As used in this article, unless the context requires otherwise:

"Armed with a deadly weapon" means the possession, at the time of entry, of any weapon described in subsection A of § 18.2-308 or any other instrumentality whatsoever which, under the circumstances in which it is used, attempted to be used or threatened to be used, would likely cause death or serious bodily injury to a human being.

"Dwelling" includes a dwelling house, an adjoining outhouse, a manufactured home used as a dwelling, a nonadjoining outhouse where a person usually lodges at night, a hotel, hospital, mental health facility, correctional facility or other house in which persons usually dwell or lodge and any railroad car or any automobile, boat, vessel, rivercraft, truck or trailer, if such railroad car, automobile, boat, vessel, rivercraft, truck or trailer is used as a dwelling or place of human habitation.

"Other structure" means any office, shop, storehouse, warehouse, banking house, church as defined in § 18.2-127, or any manufactured home not used as a dwelling or any ship, vessel or rivercraft, or any railroad car.

"Serious bodily injury" means bodily injury that involves (i) a substantial risk of death, (ii) physical pain that is chronic or experienced over a protracted period of time, (iii) protracted disfigurement, or (iv) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

§ 18.2-89.1. Burglary; how punished.

Burglary in the first degree is a Class 1 felony.

Burglary in the second degree is a Class 2 felony.

Burglary in the third degree is a Class 3 felony.

Burglary in the fourth degree is a Class 5 felony.

Burglary in the fifth degree is a Class 6 felony.

Any burglary other than burglary in the first, second, third or fourth degree is burglary in the fifth degree, a Class 6 felony.

§ 18.2-89.2. Burglary of a dwelling with intent to commit murder, rape, robbery or arson while armed with a deadly weapon; serious bodily injury.

Burglary of a dwelling with intent to commit murder, rape, robbery or arson while armed with a deadly weapon and resulting in serious bodily injury to another is burglary in the first degree, a Class 1 felony.

§ 18.2-89.3. Burglary of other structure with intent to commit murder, rape, robbery or arson while armed with a deadly weapon; serious bodily injury.

Burglary of a structure other than a dwelling with intent to commit murder, rape, robbery or arson while armed with a deadly weapon and resulting in serious bodily injury to another is burglary in the first degree, a Class 1 felony.

§ 18.2-89.4. Burglary of a dwelling with intent to commit larceny, assault and battery or a felony while armed with a deadly weapon resulting in serious bodily injury.

Burglary of a dwelling with intent to commit larceny, assault and battery or a felony other than murder, rape, robbery or arson while armed with a deadly weapon and resulting in serious bodily injury to another is burglary in the first degree, a Class 1 felony.

§ 18.2-89.5. Burglary of other structure with intent to commit larceny, assault and battery or a felony while armed with a deadly weapon resulting in serious bodily injury.

Burglary of a structure other than a dwelling with intent to commit larceny, assault and battery or a felony other than murder, rape, robbery or arson while armed with a deadly weapon and resulting in serious bodily injury to another is burglary in the first degree, a Class 1 felony.

§ 18.2-89.6. Burglary of a dwelling with intent to commit a misdemeanor while armed with a deadly weapon; serious bodily injury.

Burglary of a dwelling with intent to commit any misdemeanor other than assault and battery or trespass while armed with a deadly weapon and resulting in serious bodily injury to another is burglary in the first degree, a Class 1 felony.

§ 18.2-89.7. Burglary of a dwelling with intent to commit murder, rape, robbery or arson while armed with a deadly weapon or where there is serious bodily injury.

Burglary of a dwelling with intent to commit murder, rape, robbery or arson while armed with a deadly weapon or where there is serious bodily injury to another is burglary in the second degree, a Class 2 felony.

§ 18.2-89.8. Burglary of other structure with intent to commit murder, rape, robbery or arson while armed with a deadly weapon or where there is serious bodily injury.

Burglary of a structure other than a dwelling with intent to commit murder, rape, robbery or arson while armed with a deadly weapon or where there is serious bodily injury to another is burglary in the second degree, a Class 2 felony.

§ 18.2-89.9. Burglary of a dwelling with intent to commit larceny, assault and battery or a felony while armed with a deadly weapon or where there is serious bodily injury.

Burglary of a dwelling with intent to commit larceny, assault and battery or felony other than murder, rape, robbery or arson while armed with a deadly weapon or where there is serious bodily injury to another is burglary in the second degree, a Class 2 felony.

§ 18.2-89.10. Burglary of other structure with intent to commit larceny, assault and battery or a felony while armed with a deadly weapon or where there is serious bodily injury.

Burglary of a structure other than a dwelling with intent to commit larceny, assault and battery or a felony other than murder, rape, robbery or arson while armed with a deadly weapon or where there is serious bodily injury to another is burglary in the second degree, a Class 2 felony.

§ 18.2-89.11. Burglary of a dwelling with intent to commit a misdemeanor while armed with a deadly weapon or where there is serious bodily injury.

Burglary of dwelling with intent to commit any misdemeanor other than assault and battery or trespass while armed with a deadly weapon or where there is serious bodily injury is burglary in the second degree, a Class 2 felony.

§ 18.2-89.12. Burglary of a dwelling with intent to commit murder, rape, robbery or arson.

Burglary of a dwelling with intent to commit murder, rape, robbery or arson is burglary in the third degree, a Class 3 felony.

§ 18.2-89.13. Burglary of other structure with intent to commit murder, rape, robbery or arson.

Burglary of an other structure with intent to commit murder, rape, robbery or arson is burglary in the third degree, a Class 3 felony.

§ 18.2-89.14. Burglary of a dwelling with intent to commit larceny, assault and battery or other felony.

Burglary of a dwelling with intent to commit larceny, assault and battery or a felony other than murder, rape, robbery or arson is burglary in the fourth degree, a Class 5 felony.

§ 18.2-89.15. Burglary of other structure with intent to commit larceny, assault and battery or other felony.

Burglary of a structure other than a dwelling with intent to commit larceny, assault and battery or a felony other than murder, rape, robbery or arson is burglary in the fourth degree, a Class 5 felony.

§ 18.2-89.16. Burglary of a dwelling with intent to commit a misdemeanor other than assault and battery or trespass.

Burglary of a dwelling with intent to commit a misdemeanor other than assault and battery or trespass is burglary in the fourth degree, a Class 6 felony.

§ 18.2-93. Entering financial institution, armed, with intent to commit larceny.

~~If~~ ~~any~~ *Any* person *who,* armed with a deadly weapon, ~~shall~~ ~~enter~~ *enters* any ~~banking~~ ~~house~~ *financial institution,* in the daytime or in the nighttime, with intent to commit larceny of money, bonds, notes, or other evidence of debt therein, ~~he~~ ~~shall~~ ~~be~~ *is* guilty of *burglary in the second degree,* a Class 2 felony.

INTRODUCED

HB1053

§ 18.2-94. Possession of burglarious tools, etc.

~~If any~~ *Any* person ~~have~~ *who has* in his possession any tools, implements or outfit, with intent to commit burglary, robbery or larceny, upon conviction thereof ~~he shall be~~ *is* guilty of a Class 5 felony. The possession of such burglarious tools, implements or outfit by any person other than a licensed dealer, shall be prima facie evidence of an intent to commit burglary, robbery or larceny.

§18.2-95. Grand larceny defined.

Any person who ~~(i) commits larceny from the person of another of money or other thing of value of $5 or more, (ii)~~ commits simple larceny not from the person of another of goods and chattels of the value of ~~$200~~ *$500* or more~~, or (iii) commits simple larceny not from the person of another of any firearm, regardless of the firearm's value, shall be~~ *is* guilty of grand larceny~~, punishable by imprisonment in a state correctional facility for not less than one nor more than twenty years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than $2,500, either or both~~.

§ 18.2-95.1. Grand larceny; how punished.

Grand larceny in the first degree is a Class 3 felony.

Grand larceny in the second degree is a Class 5 felony.

Grand larceny in the third degree is a Class 6 felony.

§ 18.2-95.2. Grand larceny; $25,000 or more.

Any person who commits simple larceny not from the person of another of goods and chattels of the value of $25,000 or more is guilty of grand larceny in the first degree, a Class 3 felony.

§ 18.2-95.3. Grand larceny; $10,000 to $25,000.

Any person who commits simple larceny not from the person of another of goods and chattels of the value of $10,000 or more but less than $25,000 is guilty of grand larceny in the second degree, a Class 5 felony.

§ 18.2-95.4. Grand larceny; $500 to $10,000.

Any person who commits simple larceny not from the person of another of goods and chattels of the value of $500 or more but less than $10,000 is guilty of grand larceny in the third degree, a Class 6 felony.

§ 18.2-95.5. Larceny of $5 or more from person of another is grand larceny.

A. Any person who commits larceny from the person of another of money or other thing of value of $25,000 or more is guilty of grand larceny in the first degree, a Class 3 felony.

B. Any person who commits larceny from the person of another of money or other thing of value of $5 or more but less than $25,000 is guilty of grand larceny in the second degree, a Class 5 felony.

§ 18.2-95.6. Grand larceny of a firearm.

A. Any person who commits simple larceny not from the person of another of any firearm of the value of $25,000 or more is guilty of grand larceny in the first degree, a Class 3 felony.

B. Any person who commits simple larceny not from the person of another of any firearm of the value of $10,000 or more but less than $25,000 is guilty of grand larceny in the second degree, a Class 5 felony.

C. Any person who commits simple larceny not from the person of another of any firearm valued at any amount less than $10,000 is guilty of grand larceny in the third degree, a Class 6 felony.

§ 18.2-95.6. Grand larceny of a motor vehicle.

A. Any person who commits larceny of a motor vehicle of the value of $25,000 or more is guilty of grand larceny in the first degree, a Class 3 felony.

B. Any person who commits larceny of a motor vehicle of any value less than $25,000 is guilty of grand larceny in the second degree, a Class 5 felony.

For the purposes of this section "motor vehicle" shall be as defined in § 46.2-100.

§ 18.2-96. Petit larceny defined; how punished.

Any person who:

1. Commits larceny from the person of another of money or other thing of value of less than $5, or

2. Commits simple larceny not from the person of another of goods and chattels of the value of less than ~~$200~~ *$500*, except as *otherwise* provided ~~in subdivision (iii) of § 18.2-95~~ *by law*, ~~shall be deemed~~ *is* guilty of petit larceny, ~~which shall be punishable as~~ a Class 1 misdemeanor.

§ 18.2-96.1. Identification of certain personalty.

A. The owner of personal property may permanently mark such property, including any part thereof, for the purpose of identification with the social security number of the owner, preceded by the letters "VA."

B. [Repealed.]

C. It shall be unlawful for any person to remove, alter, deface, destroy, conceal, or otherwise obscure the manufacturer's serial number or marks, including personalty marked with a social security number preceded by the letters "VA," from such personal property or any part thereof, without the consent of the owner, with intent to render it or other property unidentifiable.

D. It shall be unlawful for any person to possess such personal property or any part thereof, without the consent of the owner, knowing that the manufacturer's serial number or any other distinguishing identification number or mark, including personalty marked with a social security number preceded by the letters "VA," has been removed, altered, defaced, destroyed, concealed, or otherwise obscured with the intent to violate the provisions of this section.

E. A person in possession of such property which is otherwise in violation of this section may apply in writing to the ~~Bureau of Criminal Investigation, Virginia~~ *Department of* State Police, for assignment of a number for the personal property providing he can show that he is the lawful owner of the property. If a number is issued in conformity with the provisions of this section, then the person to whom it was issued and any person to whom the property is lawfully disposed of shall not be in violation of this section. This subsection shall apply only when the application has been filed by a person prior to arrest or authorization of a warrant of arrest for that person by a court.

F. ~~Any person convicted of an offense under this section, when the value of the personalty is less than $200, shall be guilty of a Class 1 misdemeanor and, when the value of the personalty is $200 or more, shall be guilty of a Class 5 felony~~ *A violation of this section is larceny.*

§ 18.2-97. Larceny of certain animals and poultry.

Any person who ~~shall be~~ *is* guilty of the larceny of a dog, horse, pony, mule, cow, steer, bull ~~or~~ , calf ~~shall be~~ , *poultry, sheep, lamb, swine, or goat is* guilty of ~~a Class 5 felony; and any person who shall be guilty of the larceny of any poultry of the value of $5 dollars or more, but of the value of less than $200, or of a sheep, lamb, swine, or goat, of the value of less than $200, shall be guilty of a Class 6 felony~~ *larceny.*

§ 18.2-102. Unauthorized use of animal, aircraft, vehicle or boat; consent; accessories or accomplices.

Any person who ~~shall take, drive or use~~ *takes, drives or uses* any animal, aircraft, vehicle, boat or vessel, not his own, without the consent of the owner thereof and in the absence of the owner, and with intent temporarily to deprive the owner thereof of his possession thereof, without intent to steal the same, ~~shall be~~ *is* guilty of a ~~Class 6 felony; provided, however, that if the value of such animal, aircraft, vehicle, boat or vessel shall be less than $200, such person shall be guilty of a Class 1 misdemeanor~~ *larceny.* The consent of the owner of an animal, aircraft, vehicle, boat or vessel to its taking, driving or using shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking, driving or using of such animal, aircraft, vehicle, boat or vessel by the same or a different person. Any person who assists in, or is a party or accessory to, or an accomplice in, any such unauthorized taking, driving or using shall be subject to the same punishment as if he were the principal offender.

§ 18.2-103. Concealing or taking possession of merchandise; altering price tags; transferring goods from one container to another; counseling, etc., another in performance of such acts.

~~Whoever~~ *Any person who,* without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of the goods or merchandise, (i) willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment, or (ii) alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another, or (iii) counsels, assists, aids or abets another in the performance of any of the above acts~~, when the value of the goods or merchandise involved in the offense is less than $200, shall be guilty of petit larceny and, when the value of the goods or merchandise involved in the offense is $200 or more, shall be guilty of grand~~ *is guilty of* larceny. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise.

§ 18.2-105.1. Detention of suspected shoplifter.

A merchant, agent or employee of the merchant, who has probable cause to believe that a person has shoplifted in violation of *any section in* §§ 18.2-95 ~~or~~ ~~§~~ *through* 18.2-96 or § 18.2-103, on the premises of the merchant, may detain such person for a period not to exceed one hour pending arrival of a law-enforcement officer.

§ 18.2-108.01. Larceny with intent to sell or distribute; sale of stolen property; penalty.

A. Any person who commits larceny of property with a value of ~~$200~~ *$500* or more with the intent to sell or distribute such property is guilty of ~~a felony punishable by confinement in a state correctional facility for not less than two years nor more than 20 years~~ *grand larceny.* The larceny of more than one item of the same product is prima facie evidence of intent to sell or intent to distribute for sale.

B. Any person who sells, attempts to sell or possesses with intent to sell or distribute any stolen property with an aggregate value of ~~$200~~ *$500* or more where he knew or should have known that the property was stolen is guilty of ~~a Class 5 felony~~ *grand larceny.*

C. A violation of this section constitutes a separate and distinct offense.

§ 18.2-110. Forfeiture of motor vehicles used in commission of certain crimes.

Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a second or subsequent offense of §§ 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356 or § 18.2-357 or of a similar ordinance of any county, city or town or knowingly used for the transportation of any stolen goods, chattels or other property, when the value of such stolen goods, chattels or other property is ~~$200~~ *$500* or more, or any stolen property obtained as a result of a robbery, without regard to the value of the property, shall be forfeited to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a receipt therefor.

Forfeiture of such vehicle shall be enforced as is provided in §§ 4.1-339 through 4.1-348 as to vehicles used for the transportation of illegally acquired alcoholic beverages, and the provisions of §§ 4.1-339 through 4.1-348 shall apply, mutatis mutandis, to proceedings for the enforcement of such forfeiture except that venue for the forfeiture proceeding shall be in the county or city in which the offense occurred.

The agency seizing the motor vehicle or other conveyance shall, for such period of time as the court prescribes, be permitted the use and operation of the motor vehicle or other conveyance, after court forfeiture, for the investigation of crimes against the Commonwealth by the agency seizing the motor vehicle or other conveyance. The agency using or operating each motor vehicle shall have insurance on each vehicle used or operated for liability and property damage.

§ 18.2-111. Embezzlement deemed larceny; indictment.

~~If any~~ *Any* person *who* wrongfully and fraudulently ~~use, dispose of, conceal or embezzle~~ *uses, disposes of, conceals or embezzles* any money, bill, note, check, order, draft, bond, receipt, bill of lading or any other personal property, tangible or intangible, which he ~~shall have~~ *has* received for another or for his employer, principal or bailor, or by virtue of his office, trust, or employment, or which ~~shall have~~ *has* been entrusted or delivered to him by another or by any court, corporation or company, ~~he shall be~~ *is* guilty of embezzlement. Proof of embezzlement shall be sufficient to sustain the charge of larceny. Any person convicted hereunder shall be deemed guilty of larceny and may be indicted as for larceny and upon conviction shall be punished as provided in §*§* 18.2-95 ~~or §~~ *through* 18.2-96.

§ 18.2-128. Trespass upon church or school property.

A. Any person who, without the consent of some person authorized to give such consent, goes or enters upon, in the nighttime, the premises or property of any church or upon any school property for any purpose other than to attend a meeting or service held or conducted in such church or school property, ~~shall be~~ *is* guilty of a Class 3 misdemeanor.

B. It shall be unlawful for any person, whether or not a church member or student, to enter upon or remain upon any church or school property in violation of (i) any direction to vacate the property by a person authorized to give such direction or (ii) any posted notice which contains such information, posted at a place where it reasonably may be seen. Each time such person enters upon or remains on the posted premises or after such direction that person refuses to vacate such property, it shall constitute a separate offense.

A violation of this subsection ~~shall be~~ *is* punishable as a Class 1 misdemeanor~~, except that any~~.

C. Any person, other than a parent, who violates this subsection on school property with the intent to abduct a student ~~shall be~~ *is* guilty of a Class 6 felony.

~~C~~ *D.* For purposes of this section: (i) "school property" includes a school bus as defined in § 46.2-100 and (ii) "church" means any place of worship and includes any educational building or community center owned or leased by a church.

§ 18.2-137. Injuring, etc., any property, monument, etc.

A. If any person unlawfully destroys, defaces, damages or removes without the intent to steal any property, real or personal, not his own, or breaks down, destroys, defaces, damages or removes without the intent to steal, any monument or memorial for war veterans described in § 15.2-1812, any monument erected for the purpose of marking the site of any engagement fought during the War between the States, or for the purpose of designating the boundaries of any city, town, tract of land, or any tree marked for that purpose, he ~~shall be~~ *is* guilty of a Class 3 misdemeanor; provided that the court may, in its discretion, dismiss the charge if the locality or organization responsible for maintaining the injured property, monument, or memorial files a written affidavit with the court stating it has received full payment for the injury.

B. If any person intentionally causes such injury, he shall be ~~guilty of (i) a Class 1 misdemeanor if the value of or damage to the property, memorial or monument is less than $1,000 or (ii) a Class 6 felony if the value of or damage to the property, memorial or monument is $1,000 or more~~ *punished as provided in § 18.2-137.01*. The amount of loss caused by the destruction, defacing, damage or removal of such property, memorial or monument may be established by proof of the fair market cost of repair or fair market replacement value. Upon conviction, the court may order that the defendant pay restitution.

§ 18.2-137.01. Property damage; how punished.

First degree is where the damage to the property is $25,000 or more and is a Class 3 felony.

Second degree is where the damage to the property is $10,000 or more but less than $25,000 and is a Class 5 felony.

Third degree is where the damage to the property is $500 or more but less than $10,000 and is a Class 6 felony.

Where the damage to the property is less than $500 it is a Class 1 misdemeanor.

§ 18.2-138. Damaging public buildings, etc.; penalty.

Any person who willfully and maliciously (i) breaks any window or door of the Capitol, any courthouse, house of public worship, college, school house, city or town hall, or other public building or library, (ii) damages or defaces the Capitol or any other public building or any statuary in the Capitol, on the Capitol Square, or in or on any other public buildings or public grounds, or (iii) destroys any property in any of such buildings shall be ~~guilty of a Class 6 felony if damage to the property is $1,000 or more or a Class 1 misdemeanor if the damage is less than $1,000~~ *punished as provided in § 18.2-137.01*.

Any person who willfully and unlawfully damages or defaces any book, newspaper, magazine, pamphlet, map, picture, manuscript, or other property located in any library, reading room, museum, or other educational institution shall be ~~guilty of a Class 6 felony if damage to the property is $1,000 or more or a Class 1 misdemeanor if the damage is less than $1,000~~ *punished as provided in § 18.2-137.01*.

§ 18.2-144. Maiming, killing or poisoning animals, fowl, etc.

A. Except as otherwise provided for by law, ~~if~~ any person *who* maliciously ~~shoot, stab, wound~~ *shoots, stabs, wounds* or otherwise ~~cause~~ *causes* bodily injury to, or ~~administer~~ *administers* poison to or ~~expose~~ *exposes* poison with intent that it be taken by, any horse, mule, pony, cattle, swine or other livestock of another, with intent to maim, disfigure, disable or kill the same, or if he ~~do~~ *does* any of the foregoing acts to any animal of his own with intent to defraud any insurer thereof, he ~~shall be~~ *is* guilty of a Class 5 felony.

~~If any person do~~ *B. Any person who does* any of the foregoing acts to any fowl or to any companion animal with any of the aforesaid intents~~, he shall be~~ *is* guilty of a Class 1 misdemeanor~~, except that any~~.

C. Any second or subsequent offense ~~shall be~~ *of subsection B is* a Class 6 felony if the current offense or any previous offense resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a violation of this section.

§ 18.2-145.1. Damaging or destroying research farm product; penalty; restitution.

A. Any person or entity that (i) maliciously damages or destroys any farm product, as defined in § 3.1-692 and (ii) knows the product is grown for testing or research purposes in the context of product development in conjunction or coordination with a private research facility or a university or any federal, state or local government agency ~~is guilty of a Class 1 misdemeanor if the value of the farm product was less than $200, or a Class 6 felony if the value of the farm product was $200 or more~~ *shall be punished as provided in § 18.2-137.01*.

B. The court shall order the defendant to make restitution in accordance with § 19.2-305.1 for the damage or destruction caused. For the purpose of awarding restitution under this section, the court shall determine the market value of the farm product prior to its damage or destruction and, in so doing, shall include the cost of: (i) production, (ii) research, (iii) testing, (iv) replacement and (v) product development directly related to the product damaged or destroyed.

§ 18.2-147.1. Breaking and entering into railroad cars, motortrucks, aircraft, etc., or pipeline systems.

Any person who breaks the seal or lock of any railroad car, vessel, aircraft, motortruck, wagon or other vehicle or of any pipeline system, containing shipments of freight or express or other property, or breaks and enters any such vehicle or pipeline system with the intent to commit larceny or any felony therein ~~shall be~~ *is* guilty of a Class ~~4~~ *5* felony; ~~provided,~~ however, ~~that~~ if such person is armed with a firearm at the time of such breaking and entering, he ~~shall be~~ *is* guilty of a Class ~~3~~ *4* felony.

§ 18.2-150. Willfully destroying vessel, etc.

~~If any~~ *Any* person *who* willfully ~~scuttle, cast away~~ *scuttles, casts away* or otherwise ~~dispose~~ *disposes* of, or in any manner ~~destroy~~ *destroys*, except as otherwise provided, a ship, vessel or other watercraft, with intent to injure or defraud any owner thereof or of any property on board the same, or any insurer of such ship, vessel or other watercraft, or any part thereof, or of any such property on board the same, ~~if the same be of the value of $200, he shall be guilty of a Class 4 felony, but if it be of less value than $200, he shall be guilty of a Class 1 misdemeanor~~ *is guilty of larceny*.

§ 18.2-152.3. Computer fraud.

Any person who uses a computer or computer network without authority and with the intent to:

1. Obtain property or services by false pretenses;
2. Embezzle or commit larceny; or
3. Convert the property of another

is guilty of the crime of computer fraud.

~~If the value of the property or services obtained is $200 or more, the~~ *The* crime of computer fraud ~~shall be~~ *is* punishable as ~~a Class 5 felony. Where the value of the property or services obtained is less than $200, the crime of computer fraud shall be punishable as a Class 1 misdemeanor~~ *larceny*.

§ 18.2-152.4. Computer trespass; penalty.

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

1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network;
2. Cause a computer to malfunction, regardless of how long the malfunction persists;
3. Alter or erase any computer data, computer programs, or computer software;
4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;
5. Cause physical injury to the property of another; or
6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network
7. [Repealed].

B. Any person who violates this section ~~shall be~~ *is* guilty of computer trespass, ~~which offense shall be punishable as~~ a Class 1 misdemeanor. If there is damage to the property of another ~~valued at $2,500 or more~~ caused by such person's malicious act in violation of this section, the offense shall be ~~punishable as a Class 6 felony~~ *punished as provided in § 18.2-137.01*.

C. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software or to create any liability by reason of terms or conditions adopted by, or technical measures implemented by, a Virginia-based electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of this article. Nothing in this section shall be construed to prohibit the monitoring of computer usage of, the otherwise lawful copying of data of, or the denial of computer or Internet access to a minor by a parent or legal guardian of the minor.

§ 18.2-153. Obstructing or injuring canal, railroad, power line, etc.

~~If any~~ *A. Any* person *who* maliciously ~~obstruct, remove or injure~~ *obstructs, removes or injures* any part of a canal, railroad or urban, suburban or interurban electric railway, or any lines of any electric power company, or any bridge or fixture thereof, or maliciously ~~obstruct, tamper~~ *obstructs, tampers* with, ~~injure or remove~~ *injures or removes* any machinery, engine, car, trolley, supply or return wires or any other work thereof, or maliciously ~~open, close, displace, tamper with or injure~~ *opens, closes, displaces, tampers with or injures* any switch, switch point, switch lever, signal lever or signal of any such company, whereby the life of any person on such canal, railroad, urban, suburban or interurban electric railway, is put in peril, ~~he shall be~~ *is* guilty of a Class 4 felony~~; and, in~~.

B. In the event of the death of any such person resulting from such malicious act, 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.

C. If any such act ~~be~~ *is* committed unlawfully, but not maliciously, the person so offending ~~shall be~~ *is* guilty of a Class 6 felony~~; and in~~.

D. 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.

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

A. 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~~ *is* guilty of a Class 4 felony.

B. 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.

C. If any such act is committed unlawfully, but not maliciously, the person so offending ~~shall be~~ *is* guilty of a Class 6 felony ~~and, in~~ .

D. 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.

E. 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.

§ 18.2-155. Injuring, etc., signal used by railroad.

A. If any person maliciously ~~injure, destroy, molest, or remove~~ *injures, destroys, molests or removes* any switchlamp, flag or other signal used by any railroad, or any line, wire, post, lamp or any other structure or mechanism used in connection with any signal on a railroad, or destroys or in any manner interferes with the proper working of any signal on a railroad, whereby the life of any person is or may be put in peril he ~~shall be~~ *is* guilty of a Class 4 felony~~; and in~~.

B. In the event of the death of such person resulting from such malicious injuring, destroying or removing, 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.

C. If such act ~~be~~ *is* done unlawfully but not maliciously, the offender ~~shall be~~ *is* guilty of a Class 1 misdemeanor~~, provided that in~~.

D. In the event of the death of any such person resulting from such unlawful injuring, destroying or removing, the person so offending shall be deemed guilty of involuntary manslaughter.

§ 18.2-162. Damage or trespass to public services or utilities.

A. Any person who ~~shall~~ intentionally ~~destroy~~ *destroys* or ~~damage~~ *damages* any facility ~~which~~ *that* is used to furnish oil, telegraph, telephone, electric, gas, sewer, wastewater or water service to the public, shall be ~~guilty of a Class 4 felony, provided that in~~ *punished as provided in § 18.2-137.01*.

B. In the event the destruction or damage may be remedied or repaired for $200 or less such act shall constitute a Class 3 misdemeanor.

C. On electric generating property marked with no trespassing signs, the security personnel of a utility may detain a trespasser for a period not to exceed one hour pending arrival of a law-enforcement officer.

D. Notwithstanding any other provisions of this title, any person who ~~shall~~ intentionally ~~destroy~~ *destroys* or ~~damage~~ *damages*, or ~~attempt to destroy or damage~~ *attempts to destroy or damage,* any such facility, equipment or material connected therewith, the destruction or damage of which might, in any manner, threaten the release of radioactive materials or ionizing radiation beyond the areas in which they are normally used or contained, ~~shall be~~ *is* guilty of a Class 4 felony~~, provided that in~~.

E. In the event the destruction or damage results in the death of another due to exposure to radioactive materials or ionizing radiation, such person ~~shall be~~ *is* guilty of a Class ~~2~~ *1* felony~~; provided further, that in~~.

F. In the event the destruction or damage results in injury to another, such person ~~shall be~~ *is* guilty of a Class 3 felony.

§ 18.2-181. Issuing bad checks, etc., larceny.

Any person who, with intent to defraud, ~~shall make or draw or utter~~ *makes, draws or utters* or ~~deliver~~ *delivers* any check, draft, or order for the payment of money, upon any bank, ~~banking~~ *financial* institution, trust company, or other depository, knowing, at the time of such making, drawing, uttering or delivering, that the maker or drawer ~~has~~ *does* not *have* sufficient funds in, or credit with, such bank, ~~banking~~ *financial* institution, trust company, or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, ~~shall be~~ *is* guilty of larceny~~; and, if this check, draft, or order has a represented value of $200 or more, such person shall be guilty of a Class 6 felony. In cases in which such value is less than $200, the person shall be guilty of a Class 1 misdemeanor~~.

The word "credit" as used herein, shall be construed to mean any arrangement or understanding with the bank, trust company, or other depository for the payment of such check, draft or order.

Any person making, drawing, uttering or delivering any such check, draft or order in payment as a present consideration for goods or services for the purposes set out in this section ~~shall be~~ *is* guilty as provided herein.

§ 18.2-181.1. Issuance of bad checks.

~~It shall be a Class 6 felony for any~~ *Any* person *who*, within a period of ~~ninety~~ *90* days, ~~to issue~~ *issues* two or more checks, drafts or orders for the payment of money in violation of § 18.2-181, which have an aggregate represented value of ~~$200~~ *$500* or more and which (i) are drawn upon the same account of any bank, banking institution, trust company or other depository and (ii) are made payable to the same person, firm or corporation *is guilty of grand larceny*.

§ 18.2-186. False statements to obtain property or credit.

A. ~~A~~ *Any* person ~~shall be guilty of a Class 2 misdemeanor if he~~ *who* makes, causes to be made or conspires to make directly, indirectly or through an agency, any materially false statement in writing, knowing it to be false and intending that it be relied upon, concerning the financial condition or means or ability to pay of himself, or of any other person for whom he is acting, or any firm or corporation in

which he is interested or for which he is acting, for the purpose of procuring, for his own benefit or for the benefit of such person, firm or corporation, the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note *is guilty of a Class 2 misdemeanor*.

B. Any person who knows that a false statement has been made in writing concerning the financial condition or ability to pay of himself or of any person for whom he is acting, or any firm or corporation in which he is interested or for which he is acting and who, with intent to defraud, procures, upon the faith thereof, for his own benefit, or for the benefit of the person, firm or corporation, any such delivery, payment, loan, credit, extension, discount making, acceptance, sale or endorsement, and fails to pay for such loan, credit or benefit so procured, ~~shall, if the value of the thing or the amount of the loan, credit or benefit obtained is $200 or more, be~~ *is* guilty of ~~grand~~ larceny ~~or, if the value is less than $200, be guilty of a Class 1 misdemeanor~~.

§ 18.2-186.3. Identity theft; penalty; restitution; victim assistance.

A. It shall be unlawful for any person, without the authorization or permission of the person or persons who are the subjects of the identifying information, with the intent to defraud, for his own use or the use of a third person, to:

1. Obtain, record or access identifying information which is not available to the general public that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

2. Obtain goods or services through the use of identifying information of such other person;

3. Obtain identification documents in such other person's name; or

4. Obtain, record or access identifying information while impersonating a law-enforcement officer or an official of the government of the Commonwealth.

B. It shall be unlawful for any person without the authorization or permission of the person who is the subject of the identifying information, with the intent to sell or distribute the information to another to:

1. Fraudulently obtain, record or access identifying information that is not available to the general public that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

2. Obtain goods or services through the use of identifying information of such other person;

3. Obtain identification documents in such other person's name; or

4. Obtain, record or access identifying information while impersonating a law-enforcement officer or an official of the Commonwealth.

It shall be unlawful for any person to use identification documents or identifying information of another person, whether that person is dead or alive, to avoid summons, arrest, prosecution or to impede a criminal investigation.

C. As used in this section, "identifying information" shall include but not be limited to: (i) name; (ii) date of birth; (iii) social security number; (iv) driver's license number; (v) bank account numbers; (vi) credit or debit card numbers; (vii) personal identification numbers (PIN); (viii) electronic identification codes; (ix) automated or electronic signatures; (x) biometric data; (xi) fingerprints; (xii) passwords; or (xiii) any other numbers or information that can be used to access a person's financial resources, obtain identification, act as identification, or obtain goods or services.

D. ~~Violations of this section shall be punishable as a~~ *A violation of this section is a* Class 1 misdemeanor. Any violation resulting in financial loss of ~~greater than $200~~ *$500 or more* ~~shall be punishable as a Class 6 felony~~ *is grand larceny*. Any second or subsequent conviction ~~shall be punishable as~~ *resulting in a financial loss of less than $500 is* a Class 6 felony. Any violation resulting in the arrest and detention of the person whose identification documents or identifying information were used to avoid summons, arrest, prosecution, or to impede a criminal investigation ~~shall be punishable as~~ *is* a Class 6 felony. In any proceeding brought pursuant to this section, the crime shall be considered to have been committed in any locality where the person whose identifying information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in such locality.

E. Upon conviction, in addition to any other punishment, a person found guilty ~~of this offense~~ *under this section* shall be ordered by the court to make restitution as the court deems appropriate to any person whose identifying information was appropriated or to the estate of such person. Such restitution may include the person's or his estate's actual expenses associated with correcting inaccuracies or errors in his credit report or other identifying information.

F. Upon the request of a person whose identifying information was appropriated, the Attorney General may provide assistance to the victim in obtaining information necessary to correct inaccuracies or errors in his credit report or other identifying information; however, no legal representation shall be afforded such person.

§ 18.2-187.1. Obtaining or attempting to obtain oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service without payment; penalty; civil liability.

A. It shall be unlawful for any person knowingly, with the intent to defraud, to obtain or attempt to obtain, for himself or for another, oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service by the use of any false information, or in any case where such service has been disconnected by the supplier and notice of disconnection has been given.

B. It shall be unlawful for any person to obtain or attempt to obtain oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service by the use of any scheme, device, means or method, or by a false application for service with intent to avoid payment of lawful charges therefor.

B1. It shall be unlawful for any person to obtain, or attempt to obtain, electronic communication service as defined in § 18.2-190.1 by the use of an unlawful electronic communication device as defined in § 18.2-190.1.

C. The word "notice" as used in subsection A shall be notice given in writing to the person to whom the service was assigned. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last known address, requiring delivery to the addressee only with return receipt requested, and the actual signing of the receipt for such mail by the addressee, shall be prima facie evidence that such notice was duly received.

D. Any person who violates any provisions of this section~~, if the value of service, credit or benefit procured is $200 or more, shall be~~ *is* guilty of ~~a Class 6 felony; or if the value is less than $200, shall be guilty of a Class 1 misdemeanor~~ *larceny*. In addition, the court may order restitution for the value of the services unlawfully used and for all costs. Such costs shall be limited to actual expenses, including the base wages of employees acting as witnesses for the Commonwealth, and suit costs. However, the total amount of allowable costs granted hereunder shall not exceed $250, excluding the value of the service.

E. Any party providing oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service who is aggrieved by a violation of this section may, in a civil proceeding in any court of competent jurisdiction, seek both injunctive and equitable relief, and an award of damages, including attorney's fees and costs. In addition to any other remedy provided by law, the party aggrieved may recover an award of actual damages or $500 whichever is greater for each action.

§ 18.2-188. Defrauding hotels, motels, campgrounds, boardinghouses, etc.

It shall be unlawful for any person, without paying therefor, and with the intent to cheat or defraud the owner or keeper to:

1. Put up at a hotel, motel, campground or boardinghouse;

2. Obtain food from a restaurant or other eating house;

3. Gain entrance to an amusement park; or

4. Without having an express agreement for credit, procure food, entertainment or accommodation from any hotel, motel, campground, boardinghouse, restaurant, eating house or amusement park.

It shall be unlawful for any person, with intent to cheat or defraud the owner or keeper out of the pay therefor to obtain credit at a hotel, motel, campground, boardinghouse, restaurant or eating house for food, entertainment or accommodation by means of any false show of baggage or effects brought thereto.

It shall be unlawful for any person, with intent to cheat or defraud, to obtain credit at a hotel, motel, campground, boardinghouse, restaurant, eating house or amusement park for food, entertainment or accommodation through any misrepresentation or false statement.

It shall be unlawful for any person, with intent to cheat or defraud, to remove or cause to be removed any baggage or effects from a hotel, motel, campground, boardinghouse, restaurant or eating house while there is a lien existing thereon for the proper charges due from him for fare and board furnished.

Any person who violates any provision of this section ~~shall, if the value of service, credit or benefit procured or obtained is $200 or more, be~~ *is* guilty of ~~a Class 5 felony; or if the value is less than $200, a Class 1 misdemeanor~~ *larceny*.

§ 18.2-192. Credit card theft.

(1) A person is guilty of credit card or credit card number theft when:

(a) He takes, obtains or withholds a credit card or credit card number from the person, possession, custody or control of another without the cardholder's consent or who, with knowledge that it has been so taken, obtained or withheld, receives the credit card or credit card number with intent to use it or sell it, or to transfer it to a person other than the issuer or the cardholder; or

(b) He receives a credit card or credit card number that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use, to sell or to transfer the credit card or credit card number to a person other than the

issuer or the cardholder; or

(c) He, not being the issuer, sells a credit card or credit card number or buys a credit card or credit card number from a person other than the issuer; or

(d) He, not being the issuer, during any ~~twelve~~*12*-month period, receives credit cards or credit card numbers issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute a violation of § 18.2-194 and subdivision (1) (c) of this section.

(2) Credit card or credit card number theft is grand larceny ~~and is punishable as provided in § 18.2-95~~ *in the third degree, a Class 6 felony*.

§ 18.2-194. Unauthorized possession of two or more signed credit cards or credit card numbers.

When a person, other than the cardholder or a person authorized by him, possesses two or more credit cards which are signed or two or more credit card numbers, such possession shall be prima facie evidence that ~~said~~ *the* cards or credit card numbers were obtained in violation of ~~subdivision (1) (b) of § 18.2-193~~ *§ 18.2-192*.

§ 18.2-195. Credit card fraud; conspiracy; penalties.

(1) A person is guilty of credit card fraud when, with intent to defraud any person, he:

(a) Uses for the purpose of obtaining money, goods, services or anything else of value a credit card or credit card number obtained or retained in violation of § 18.2-192 or a credit card or credit card number which he knows is expired or revoked;

(b) Obtains money, goods, services or anything else of value by representing (i) without the consent of the cardholder that he is the holder of a specified card or credit card number or (ii) that he is the holder of a card or credit card number and such card or credit card number has not in fact been issued;

(c) Obtains control over a credit card or credit card number as security for debt; or

(d) Obtains money from an issuer by use of an unmanned device of the issuer or through a person other than the issuer when he knows that such advance will exceed his available credit with the issuer and any available balances held by the issuer.

(2) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card or credit card number by the cardholder, or any agent or employee of such person, is guilty of a credit card fraud when, with intent to defraud the issuer or the cardholder, he:

(a) Furnishes money, goods, services or anything else of value upon presentation of a credit card or credit card number obtained or retained in violation of § 18.2-192, or a credit card or credit card number which he knows is expired or revoked;

(b) Fails to furnish money, goods, services or anything else of value which he represents or causes to be represented in writing or by any other means to the issuer that he has furnished; or

(c) Remits to an issuer or acquirer a record of a credit card or credit card number transaction which is in excess of the monetary amount authorized by the cardholder.

(3) Conviction of credit card fraud is punishable as *petit larceny,* a Class 1 misdemeanor if the value of all money, goods, services and other things of value furnished in violation of this section, or if the difference between the value of all money, goods, services and anything else of value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed ~~$200~~ *$500* in any six-month period; conviction of credit card fraud is ~~punishable as a Class 6 felony~~ *grand larceny* if such value exceeds ~~$200~~ *$500* in any six-month period.

(4) Any person who conspires, confederates or combines with another, (i) either within or without the Commonwealth to commit credit card fraud within the Commonwealth or (ii) within the Commonwealth to commit credit card fraud within or without the Commonwealth, is guilty of a Class 6 felony.

§ 18.2-195.2. Fraudulent application for credit card; penalties.

A. A person ~~shall be guilty of a Class 2 misdemeanor if he~~ *who* makes, causes to be made or conspires to make, directly, indirectly or through an agency, any materially false statement in writing concerning the financial condition or means or ability to pay of himself or of any other person for whom he is acting or any firm or corporation in which he is interested or for which he is acting, knowing the statement to be false and intending that it be relied upon for the purpose of procuring a credit card *is guilty of a Class 2 misdemeanor*. However, if the statement is made in response to a written solicitation from the issuer or an agent of the issuer to apply for a credit card, he ~~shall be~~ *is* guilty of a Class 4 misdemeanor.

B. A person who knows that a false statement has been made in writing concerning the financial condition or ability to pay of himself or of any person for whom he is acting or any firm or corporation in which he is interested or for which he is acting and who (i) with intent to defraud, procures a credit card, upon the faith thereof, for his own benefit, or for the benefit of the person, firm or corporation, and (ii) fails to pay for money, property, services or any thing of value obtained by use of the credit card, ~~shall be~~ *is* guilty of ~~grand~~ larceny ~~if the value so obtained is $200 or more or a Class 1~~

~~misdemeanor if the value is less than $200~~.

§ 18.2-197. Criminally receiving goods and services fraudulently obtained.

A person is guilty of criminally receiving goods and services fraudulently obtained when he receives money, goods, services or anything else of value obtained in violation of subsection (1) of § 18.2-195 with the knowledge or belief that the same were obtained in violation of subsection (1) of § 18.2-195. Conviction of criminal receipt of goods and services fraudulently obtained is punishable as *petit larceny*, a Class 1 misdemeanor if the value of all money, goods, services and anything else of value, obtained in violation of this section, does not exceed ~~$200~~ *$500* in any six-month period; conviction of criminal receipt of goods and services fraudulently obtained is punishable as ~~a Class 6 felony~~ *grand larceny* if such value exceeds ~~$200~~ *$500* in any six-month period.

§ 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 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~~ *is guilty of distribution in the second degree, a Class 2 felony*.

D. 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,~~ *and were convictions for separate transactions, with different dates for each prior conviction, he is guilty of distribution in the first degree, a Class 1 felony, and the penalty upon conviction shall include a mandatory minimum of* 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 ~~shall be fined~~ *a fine of* not more than $500,000.

~~D~~ *E.* 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~~ *is* guilty of *distribution in the fourth degree*, a Class 5 felony.

~~E~~ *F.* 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~~*G.* 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~~ *is* guilty of a Class 1 misdemeanor.

~~G~~ *H.* 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~~ *is* 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~~ *I.* 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~~ *is* guilty of a felony punishable by a fine of not more than one 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~~ *L* 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~~ *J.* Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise ~~shall be~~ *is* 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 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~~ *K.* 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~~ *is* guilty of a felony punishable by a fine of not more than one 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~~ *Any person who violates this section is guilty of distribution in the second degree, a Class 2 felony. The penalty upon* conviction~~, the person~~ shall ~~be sentenced to not less than five years nor more than forty years imprisonment,~~ *include a mandatory minimum term of* three years of ~~which shall be a minimum, mandatory 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 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 *distribution in the fourth degree,* a Class 5 felony;

(3) More than five pounds of marijuana is guilty of *distribution in the third degree,* a *Class 3* felony ~~punishable by imprisonment of not less than five nor more than thirty 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 *distribution in the third degree,* a *Class 3* felony ~~punishable by imprisonment of not less than five nor more than thirty 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,~~ *and were convictions for separate transactions, with different dates for each prior conviction, he is guilty of distribution in the second degree, a Class 2 felony, and the penalty upon conviction shall include a mandatory minimum* three years of ~~which shall be a minimum, mandatory term of~~ imprisonment ~~not to be suspended in whole or in part and~~ to be served consecutively with any other sentence and ~~shall be fined~~ *a fine of* 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 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 months or a fine of not more than $20,000, either or both~~ *is distribution in the fourth degree, a Class 5 felony*. Any person violating the provisions of this subsection shall, upon conviction, be incarcerated for a minimum, mandatory term of six months which shall not be suspended in whole or in part and shall 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.

§ 18.2-251.3. Possession and distribution of gamma-butyrolactone; 1, 4-butanediol; enhanced penalty.

Any person who knowingly manufactures, sells, gives, distributes or possesses with the intent to distribute the substances gamma-butyrolactone; or 1, 4-butanediol, when intended for human consumption ~~shall be~~ *is* guilty of *distribution in the third degree,* a Class 3 felony.

§ 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~~,~~ *or* 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~~,~~ *or* II, *(iii) distribute any drug classified in Schedule* III or IV or marijuana *to any person under 18 years of age, or (iv) cause any person under 18 years of age to assist in such distribution of a Schedule III or IV drug or marijuana*. Any person violating this provision ~~shall upon conviction be imprisoned in a state correctional facility for a period not less than ten nor more than fifty years, and fined not more than $100,000~~ *with a Schedule III or IV controlled substance or marijuana is guilty of distribution in the second degree, a Class 2 felony. Any person violating this provision with a Schedule I or II controlled substance is guilty of distribution in the first degree, a Class 1 felony.* Five years of the sentence imposed shall ~~not be suspended, in whole or in part for a conviction under this section involving~~ *be a mandatory minimum if the offense involves* a Schedule I or II controlled substance or one ounce or more of marijuana. Two years of the sentence imposed shall ~~not be suspended, in whole or in part,~~ *be a mandatory minimum* for a conviction involving less than one ounce of marijuana.

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~~ *is* guilty of a Class 6 felony.

§ 18.2-289. Use of machine gun for crime of violence.

Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a Class ~~2~~ *1* felony.

§ 18.2-300. Possession or use of "sawed-off" shotgun or rifle.

A. Possession or use of a "sawed-off" shotgun or "sawed-off" rifle in the perpetration or attempted perpetration of a crime of violence is a Class ~~2~~ *1* felony.

B. Possession or use of a "sawed-off" shotgun or "sawed-off" rifle for any other purpose, except as permitted by this article and official use by those persons permitted possession by § 18.2-303, is a Class 4 felony.

§ 18.2-427. Use of profane, threatening or indecent language over public airways.

~~If any~~ *Any* person ~~shall use~~ *who uses* obscene, vulgar, profane, lewd, lascivious, or indecent

language, or ~~make~~ *makes* any suggestion or proposal of an obscene nature, ~~or threaten any illegal or immoral act~~ with the intent to coerce, intimidate, or harass any person, over any telephone or citizens band radio, in this Commonwealth, ~~he shall be~~ *is* guilty of a Class ~~1~~ *3* misdemeanor. *Any person who threatens any illegal or immoral act with such intent over any telephone or citizens band radio, in this Commonwealth, is guilty of a Class 1 misdemeanor.*

§ 18.2-481. Treason defined; how proved and punished.

Treason shall consist only in:

(1) Levying war against the Commonwealth;

(2) Adhering to its enemies, giving them aid and comfort;

(3) Establishing, without authority of the legislature, any government within its limits separate from the existing government;

(4) Holding or executing, in such usurped government, any office, or professing allegiance or fidelity to it; or

(5) Resisting the execution of the laws under color of its authority.

Such treason, if proved by the testimony of two witnesses to the same overt act, or by confession in court, ~~shall be punishable as~~ *is* a Class ~~2~~ *1* felony.

§ 19.2-163. Compensation of court-appointed counsel.

Counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services in an amount fixed by each of the courts in which he appears according to the time and effort expended by him in the particular case, not to exceed the amounts specified in the following schedule:

1. In a district court, a sum not to exceed $120 or such other amount as may be provided by law; such amount shall be allowed in any case wherein counsel conducts the defense of a single charge against the indigent through to its conclusion or a charge of violation of probation at any hearing conducted under § 19.2-306, without a requirement for accounting of time devoted thereto; thereafter, compensation for additional charges against the same accused also conducted by the same counsel shall be allowed on the basis of additional time expended as to such additional charges;

2. In a circuit court (i) to defend a felony charge that may be punishable by death an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by confinement in the state correctional facility for a period of more than ~~twenty~~ *20* years, or a charge of violation of probation for such offense, a sum not to exceed $1,235; (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed $445; and (iv) to defend any misdemeanor charge punishable by confinement in jail or a charge of violation of probation for such offense, a sum not to exceed $158. In the event any case is required to be retried due to a mistrial for any cause or reversed on appeal, the court may allow an additional fee for each case in an amount not to exceed the amounts allowable in the initial trial. In the event counsel is appointed to defend an indigent charged with a felony that may be punishable by death, such counsel shall continue to receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a felony that may not be punishable by death, prior to final disposition of the case. In the event counsel is appointed to defend an indigent charged with any other felony, such counsel shall receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district court or circuit court.

The circuit or district court shall direct the payment of such reasonable expenses incurred by such court-appointed counsel as it deems appropriate under the circumstances of the case. Counsel appointed by the court to represent an indigent charged with repeated violations of the same section of the Code of Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such offenses are tried as part of the same judicial proceeding. The trial judge shall consider any guidelines established by the Supreme Court but shall have the sole discretion to fix the amount of compensation to be paid counsel appointed by the court to defend a felony charge that may be punishable by death.

The circuit or district court shall direct that the foregoing payments shall be paid out by the Commonwealth, if the defendant is charged with a violation of a statute, or by the county, city or town, if the defendant is charged with a violation of a county, city or town ordinance, to the attorney so appointed to defend such person as compensation for such defense.

Counsel representing a defendant charged with a ~~Class 1~~ *capital* felony may submit to the court, on a monthly basis, a statement of all costs incurred and fees charged by him in the case during that month. Whenever the total charges as are deemed reasonable by the court for which payment has not previously been made or requested exceed $1,000, the court may direct that payment be made as otherwise provided in this section.

When such directive is entered upon the order book of the court, the Commonwealth, county, city or town, as the case may be, shall provide for the payment out of its treasury of the sum of money so

specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected, the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. An abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by such court.

Any statement submitted by an attorney for payments due him for indigent representation or for representation of a child pursuant to § 16.1-266 shall, after the submission of the statement, be forwarded forthwith by the clerk to the Commonwealth, county, city or town, as the case may be, responsible for payment.

For the purposes of this section, the defense of a case may be considered conducted through to its conclusion and an appointed counsel entitled to compensation for his services in the event an indigent accused fails to appear in court subject to a capias for his arrest or a show cause summons for his failure to appear and remains a fugitive from justice for one year following the issuance of the capias or the summons to show cause, and appointed counsel has appeared at a hearing on behalf of the accused.

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

A. In any preliminary hearing of a charge against a person for a violation under subsection B of § 18.2-61, subsection B of § 18.2-67.1, *or* subsection B of § 18.2-67.2 ~~or § 18.2-67.2:1~~, upon a finding of probable cause the court may request that its court services unit, in consultation with any appropriate social services organization, local board of mental health and mental retardation, or other community mental health services organization, prepare a report analyzing the feasibility of providing counseling or other forms of therapy for the accused and the probability such treatment will be successful. Based upon this report and any other relevant evidence, the court may, ~~(i)~~ with the consent of the accused, the complaining witness and the attorney for the Commonwealth in any case involving a violation of subsection B of § 18.2-61, subsection B of § 18.2-67.1 or subsection B of § 18.2-67.2 ~~or (ii) with the consent of the accused and after consideration of the views of the complaining witness in any case involving a violation of § 18.2-67.2:1~~, authorize the accused to submit to and complete a designated course of counseling or therapy. In such case, the hearing shall be adjourned until such time as counseling or therapy is completed or terminated. Upon the completion of counseling or therapy by the accused and after consideration of a final evaluation to be furnished to the court by the person responsible for conducting such counseling or therapy and such further report of the court services unit as the court may require, and after consideration of the views of the complaining witness, the court, in its discretion, may discharge the accused if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

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

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

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

B. After such hearing pursuant to which the accused has completed counseling or therapy and upon the recommendation of the juvenile and domestic relations district court judge conducting the hearing, the judge of the circuit court may dismiss the charge with the consent of the attorney for the Commonwealth and if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 19.2-264.4. Sentence proceeding.

A. Upon a finding that the defendant is guilty of an offense which may be punishable by death, a proceeding shall be held which shall be limited to a determination as to whether the defendant shall be sentenced to death or life imprisonment. Upon request of the defendant, a jury shall be instructed that for all ~~Class 1~~ *capital* felony offenses committed after January 1, 1995, a defendant shall not be eligible for parole if sentenced to imprisonment for life. In case of trial by jury, where a sentence of death is not recommended, the defendant shall be sentenced to imprisonment for life.

A1. In any proceeding conducted pursuant to this section, the court shall permit the victim, as defined in § 19.2-11.01, upon the motion of the attorney for the Commonwealth, and with the consent of the victim, to testify in the presence of the accused regarding the impact of the offense upon the victim. The court shall limit the victim's testimony to the factors set forth in clauses (i) through (vi) of

subsection A of § 19.2-299.1.

B. In cases of trial by jury, evidence may be presented as to any matter which the court deems relevant to sentence, except that reports under the provisions of § 19.2-299, or under any rule of court, shall not be admitted into evidence.

Evidence which may be admissible, subject to the rules of evidence governing admissibility, may include the circumstances surrounding the offense, the history and background of the defendant, and any other facts in mitigation of the offense. Facts in mitigation may include, but shall not be limited to, the following: (i) the defendant has no significant history of prior criminal activity, (ii) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, (iii) the victim was a participant in the defendant's conduct or consented to the act, (iv) at the time of the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was significantly impaired, (v) the age of the defendant at the time of the commission of the capital offense, or (vi) even if § 19.2-264.3:1.1 is inapplicable as a bar to the death penalty, the subaverage intellectual functioning of the defendant.

C. The penalty of death shall not be imposed unless the Commonwealth shall prove beyond a reasonable doubt that there is a probability based upon evidence of the prior history of the defendant or of the circumstances surrounding the commission of the offense of which he is accused that he would commit criminal acts of violence that would constitute a continuing serious threat to society, or that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim.

D. The verdict of the jury shall be in writing, and in one of the following forms:

(1) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and that (after consideration of his prior history that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society) or his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved (torture) (depravity of mind) (aggravated battery to the victim), and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

Signed _____ foreman"

or

(2) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and having considered all of the evidence in aggravation and mitigation of such offense, fix his punishment at (i) imprisonment for life; or (ii) imprisonment for life and a fine of $ _____

Signed _____ foreman"

E. In the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a sentence of imprisonment for life.

§ 19.2-270.1. Use of photographs as evidence in certain larceny and burglary prosecutions.

In any prosecution for larceny under the provisions of §§ 18.2-95, 18.2-96 or § 18.2-98, or for shoplifting under the provisions of § 18.2-103, or for burglary under the provisions of §§ 18.2-89, ~~18.2-90,~~ ~~18.2-91~~ ~~or~~ ~~§ 18.2-92~~ *or §§ 18.2-89.2 through 18.2-89.16*, photographs of the goods, merchandise, money or securities alleged to have been taken or converted shall be deemed competent evidence of such goods, merchandise, money or securities and shall be admissible in any proceeding, hearing or trial of the case to the same extent as if such goods, merchandise, money or securities had been introduced as evidence. Such photographs shall bear a written description of the goods, merchandise, money or securities alleged to have been taken or converted, the name of the owner of such goods, merchandise, money or securities and the manner of the identification of same by such owner, or the name of the place wherein the alleged offense occurred, the name of the accused, the name of the arresting or investigating police officer or conservator of the peace, the date of the photograph and the name of the photographer. Such writing shall be made under oath by the arresting or investigating police officer or conservator of the peace, and the photographs identified by the signature of the photographer. Upon the filing of such photograph and writing with the police authority or court holding such goods and merchandise as evidence, such goods or merchandise shall be returned to their owner, or the proprietor or manager of the store or establishment wherein the alleged offense occurred.

§ 19.2-289. Conviction of petit larceny.

In a prosecution for grand larceny, if it ~~be~~ *is* found that the thing stolen is of less value than ~~$200~~ *$500*, the jury may find the accused guilty of petit larceny.

§ 19.2-290. Conviction of petit larceny though thing stolen worth more than $500.

In a prosecution for petit larceny, though the thing stolen ~~be~~ *is* of the value of ~~$200~~ *$500* or more, the jury may find the accused guilty; and upon a conviction under this section or § 19.2-289 the accused shall be sentenced for petit larceny.

§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.

A. Any person convicted of two or more separate acts of violence when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction, shall, upon conviction of a third or subsequent act of violence, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

a. First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.);

b. Mob-related felonies under Article 2 (§ 18.2-38 et seq.);

c. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.);

d. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.);

f. Except as otherwise provided in § 18.2-67.5:2 or § 18.2-67.5:3, criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.); or

g. Arson in violation of *former* § 18.2-77 when the structure burned was occupied ~~or~~ , a Class 3 felony violation of *former* § 18.2-79*, any violation of § 18.2-77.3 or § 18.2-77.4*.

(ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this section.

B. Prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed under "act of violence" if such offense would be a felony if committed in the Commonwealth.

The Commonwealth shall notify the defendant in writing, at least ~~thirty~~ *30* days prior to trial, of its intention to seek punishment pursuant to this section.

C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole and shall not be eligible for any good conduct allowance or any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section, other than a person who was sentenced under subsection A of § 18.2-67.5:3 for criminal sexual assault convictions specified in subdivision f, (i) who has reached the age of ~~sixty-five~~ *65* or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of ~~sixty~~ *60* or older and who has served at least ~~ten~~ *10* years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this subsection.

§ 19.2-298.01. Use of discretionary sentencing guidelines.

A. In all felony cases, other than ~~Class 1~~ *capital* felonies, the court shall (i) have presented to it the appropriate discretionary sentencing guidelines worksheets and (ii) review and consider the suitability of the applicable discretionary sentencing guidelines established pursuant to Chapter 8 (§ 17.1-800 et seq.) of Title 17.1. Before imposing sentence, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection. In cases tried by a jury, the jury shall not be presented any information regarding sentencing guidelines.

B. In any felony case, other than ~~Class 1~~ *capital* felonies, in which the court imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure.

C. In felony cases, other than ~~Class 1~~ *capital* felonies, tried by a jury and in felony cases tried by the court without a jury upon a plea of not guilty, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets. In felony cases tried upon a plea of guilty, including cases which are the subject of a plea agreement, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the accused, the court and the attorney for the Commonwealth, the worksheets shall be prepared by the attorney for the Commonwealth.

D. Except as provided in subsection E, discretionary sentencing guidelines worksheets prepared pursuant to this section shall be subject to the same distribution as presentence investigation reports prepared pursuant to subsection A of § 19.2-299.

E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days.

F. The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis of any other post-conviction relief.

G. The provisions of this section shall apply only to felony cases in which the offense is committed

on or after January 1, 1995, and for which there are discretionary sentencing guidelines. For purposes of the discretionary sentencing guidelines only, a person sentenced to a boot camp incarceration program pursuant to § 19.2-316.1, a detention center incarceration program pursuant to § 19.2-316.2 or a diversion center incarceration program pursuant to § 19.2-316.3 shall be deemed to be sentenced to a term of incarceration.

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

A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall, or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty, or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, ~~18.2-67.2:1,~~ 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-358, 18.2-361, 18.2-362, 18.2-366, 18.2-367, 18.2-368, 18.2-370, 18.2-370.1, or § 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of §§ 18.2-67.5, 18.2-67.5:2, or § 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

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

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

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

§ 19.2-303.4. Payment of costs when proceedings deferred and defendant placed on probation.

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

§ 19.2-310.2:1. Saliva or tissue sample required for DNA analysis after arrest for a violent felony.

Every person arrested for a violent felony as defined in § 19.2-297.1 or a violation of §§ ~~18.2-89, 18.2-90, 18.2-91, or § 18.2-92~~ *18.2-89.2 through 18.2-89.13*, shall have a sample of his saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. After a determination by a magistrate or a grand jury that probable cause exists for the arrest, a sample shall be taken prior to the person's release from custody. The analysis shall be performed by the Division of Forensic Science or other entity designated by the Division. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Division in a DNA data bank and shall be made available as provided in § 19.2-310.5.

The clerk of the court shall notify the Division of final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, the Division shall destroy the sample and all records thereof, provided there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the data bank.

§ 19.2-327.2. Issuance of writ of actual innocence.

Notwithstanding any other provision of law or rule of court, upon a petition of a person incarcerated who was convicted of a felony upon a plea of not guilty, or for any person, regardless of the plea, sentenced to death, or convicted of (i) a ~~Class 1~~ *capital* felony, (ii) a Class ~~2~~ *1* felony or (iii) any felony for which the maximum penalty is imprisonment for life, the Supreme Court shall have the authority to issue writs of actual innocence under this chapter. The writ shall lie to the circuit court that entered the felony conviction; and that court shall have the authority to conduct hearings, as provided for in § 19.2-327.5, on such a petition as directed by order from the Supreme Court.

§ 19.2-327.3. Contents and form of the petition based on previously unknown or untested human biological evidence of actual innocence.

A. The petitioner shall allege categorically and with specificity, under oath, the following: (i) the crime for which the petitioner was convicted, and that such conviction was upon a plea of not guilty or that the person is under a sentence of death or convicted of (1) a ~~Class 1~~ *capital* felony, (2) a Class ~~2~~ *1* felony or (3) any felony for which the maximum penalty is imprisonment for life; (ii) that the petitioner is actually innocent of the crime for which he was convicted; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence; (iv) that the evidence was not previously known or available to the petitioner or his trial attorney of record at the time the conviction became final in the circuit court, or if known, the reason that the evidence was not subject to the scientific testing set forth in the petition; (v) the date the test results under § 19.2-327.1 became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney of record has filed the petition within 60 days of obtaining the test results under § 19.2-327.1; (vii) that the petitioner is currently incarcerated; (viii) the reason or reasons the evidence will prove that no rational trier of fact could have found proof of guilt beyond a reasonable doubt; and (ix) for any conviction that became final in the circuit court after June 30, 1996, that the evidence was not available for testing under § 9.1-121. The Supreme Court may issue a stay of execution pending proceedings under the petition. Nothing in this chapter shall constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to § 53.1-232.1 (iii) or (iv).

B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, appeals and their dispositions. A copy of any test results shall be filed with the petition. The petition shall be filed on a form provided by the Supreme Court. If the petitioner fails to submit a completed form, the court may dismiss the petition or return the petition to the prisoner pending the completion of such form. The petitioner shall be responsible for all statements contained in the petition. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution and conviction of perjury as provided for in § 18.2-434.

C. The Supreme Court shall not accept the petition unless it is accompanied by a duly executed return of service in the form of a verification that a copy of the petition and all attachments has been served on the attorney for the Commonwealth of the jurisdiction where the conviction occurred and the Attorney General or an acceptance of service signed by these officials, or any combination thereof. The Attorney General shall have 30 days after receipt of the record by the clerk of the Supreme Court in which to file a response to the petition. The response may contain a proffer of any evidence pertaining to the guilt of the defendant that is not included in the record of the case, including evidence that was suppressed at trial.

D. The Supreme Court may, when the case has been before a trial or appellate court, inspect the record of any trial or appellate court action, and the Court may, in any case, award a writ of certiorari to the clerk of the respective court below, and have brought before the Court the whole record or any part of any record.

E. In any petition filed pursuant to this chapter, the defendant is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10 of this title.

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

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

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

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

§ 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article.

A. Except as otherwise provided in this article, every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent or provide for home instruction of such child as described in § 22.1-254.1.

As prescribed in the regulations of the Board of Education, the requirements of this section may also be satisfied by sending a child to an alternative program of study or work/study offered by a public, private, denominational or parochial school or by a public or private degree-granting institution of higher education. Further, in the case of any five-year-old child who is subject to the provisions of this subsection, the requirements of this section may be alternatively satisfied by sending the child to any public educational prekindergarten program, including a Head Start program, or in a private, denominational or parochial educational prekindergarten program.

Instruction in the home of a child or children by the parent, guardian or other person having control or charge of such child or children shall not be classified or defined as a private, denominational or parochial school.

The requirements of this section shall apply to (i) any child in the custody of the Department of Juvenile Justice or the Department of Corrections who has not passed his eighteenth birthday and (ii) any child whom the division superintendent has required to take a special program of prevention, intervention, or remediation as provided in subsection C of § 22.1-253.13:1 and in § 22.1-254.01. However, the requirements of this section shall not apply to any child who has obtained a high school diploma, its equivalent, or a certificate of completion or who has otherwise complied with compulsory school attendance requirements as set forth in this article.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and

2. On the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. A school board may excuse from attendance at school:

1. On recommendation of the principal and the division superintendent and with the written consent of the parent or guardian, any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school; and

2. On recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at such school.

D. Local school boards may allow the requirements of subsection A of this section to be met under the following conditions:

For a student who is at least 16 years of age, there shall be a meeting of the student, the student's parents, and the principal or his designee of the school in which the student is enrolled in which an individual student alternative education plan shall be developed in conformity with guidelines prescribed by the Board, which plan must include:

a. Career guidance counseling;

b. Mandatory enrollment and attendance in a general educational development preparatory program or other alternative education program approved by the local school board with attendance requirements that provide for reporting of student attendance by the chief administrator of such GED preparatory program or approved alternative education program to such principal or his designee;

c. Counseling on the economic impact of failing to complete high school; and

d. Procedures for reenrollment to comply with the requirements of subsection A of this section.

A student for whom an individual student alternative education plan has been granted pursuant to this subsection and who fails to comply with the conditions of such plan shall be in violation of the compulsory school attendance law, and the division superintendent or attendance officer of the school division in which such student was last enrolled shall seek immediate compliance with the compulsory school attendance law as set forth in this article.

Students enrolled with an individual student alternative education plan shall be counted in the average daily membership of the school division.

E. A school board may, in accordance with the procedures set forth in Article 3 (§ 22.1-276.01 et seq.) of Chapter 14 of this title and upon a finding that a school-age child has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime that resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260; (iii) suspended pursuant to § 22.1-277.05; or (iv) expelled from school attendance pursuant to § 22.1-277.06 or § 22.1-277.07 or subsection B of § 22.1-277, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.2:1.

F. Whenever a court orders any pupil into an alternative education program offered in the public schools, the local school board of the school division in which the program is offered shall determine the appropriate alternative education placement of the pupil, regardless of whether the pupil attends the public schools it supervises or resides within its school division.

The juvenile and domestic relations district court of the county or city in which a pupil resides or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77*.1* et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other education program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277.04, 22.1-277.05, 22.1-277.06, 22.1-277.07, and 22.1-277.2. As used in this subsection, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

G. Within one calendar month of the opening of school, each school board shall send to the parents or guardian of each student enrolled in the division a copy of the compulsory school attendance law and the enforcement procedures and policies established by the school board.

H. The provisions of this article shall not apply to:

1. Children suffering from contagious or infectious diseases while suffering from such diseases;

2. Children whose immunizations against communicable diseases have not been completed as provided in § 22.1-271.2;

3. Children under 10 years of age who live more than two miles from a public school unless public transportation is provided within one mile of the place where such children live;

4. Children between the ages of 10 and 17, inclusive, who live more than 2.5 miles from a public school unless public transportation is provided within 1.5 miles of the place where such children live;

and

5. Children excused pursuant to subsections B and C of this section.

Further, any child who will not have reached his sixth birthday on or before September 30 of each school year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend school until the following year because the child, in the opinion of the parent or guardian, is not mentally, physically or emotionally prepared to attend school, may delay the child's attendance for one year.

The distances specified in subdivisions 3 and 4 of this subsection shall be measured or determined from the child's residence to the entrance to the school grounds or to the school bus stop nearest the entrance to the residence of such children by the nearest practical routes which are usable for walking or riding. Disease shall be established by the certificate of a reputable practicing physician in accordance with regulations adopted by the Board of Education.

§ 27-32.1. Right of entry to investigate cause of fire or explosion.

If in making such an investigation, the fire marshal shall make complaint under oath that there is good cause of suspicion or belief that the burning of or explosion on any land, building or vessel or of any object was caused by any act constituting a crime as defined in Article 1 (§ 18.2-77.*1* et seq.) of Chapter 5 of Title 18.2 and that he has been refused admittance to the land, building or vessel or to examine the object in or on which any fire or explosion occurred within ~~fifteen~~ *15* days after the extinguishment of such, any justice of the peace of the city or county where the land, building, vessel or object is located may issue a warrant to the sheriff of the county or the sergeant of the city requiring him to enter such land, building or vessel or the premises upon which the object is located in the company of the fire marshal for the purposes of conducting a search for evidence showing that such fire or explosion was caused by any act defined in Article 1 of Chapter 5, of Title 18.2.

§ 29.1-553. Selling or offering for sale; penalty.

A. Any person who offers for sale, sells, offers to purchase, or purchases any wild bird or wild animal, or any part thereof, or any freshwater fish, except as provided by law, ~~shall be~~ *is* guilty of ~~a Class 1 misdemeanor. However, when the aggregate of such sales or purchases or any combination thereof, by any person totals $200 or more during any ninety-day period, that person shall be guilty of a Class 6 felony~~ *larceny*.

B. Whether or not criminal charges have been placed, when any property is taken possession of by a game warden for the purpose of being used as evidence of a violation of this section or for confiscation, the game warden making such seizure shall immediately report the seizure to the Attorney for the Commonwealth.

C. In any prosecution for a violation of this section, photographs of the wild bird, wild animal, or any freshwater fish, or any part thereof shall be deemed competent evidence of such wild bird, wild animal, or freshwater fish, or part thereof and shall be admissible in any proceeding, hearing, or trial of the case to the same extent as if such wild bird, wild animal, or any freshwater fish, or part thereof had been introduced as evidence. Such photographs shall bear a written description of the wild bird, wild animal, or freshwater fish, or parts thereof, the name of the place where the alleged offense occurred, the date on which the alleged offense occurred, the name of the accused, the name of the arresting officer or investigating officer, the date of the photograph, and the name of the photographer. The photographs shall be identified by the signature of the photographer.

§ 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed nursing home shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77.*1* et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5

(§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state. However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed following the conviction.

Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

A nursing home shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the nursing home shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.

§ 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by a mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77*.1* et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.

However, a home care organization or hospice may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within 30 days of employment, obtain for any

compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

C. A licensed home care organization or hospice shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such home care organization or hospice.

§ 32.1-318. Knowing failure to deposit, transfer or maintain patient trust funds in separate account; penalty.

A. Any person having any patient trust funds in his possession, custody or control, who, knowing that he is violating any statute or regulation, deliberately fails to deposit, transfer or maintain such funds in a separate, designated, trust bank account as required by such statute or regulation shall be guilty of a Class 1 misdemeanor.

B. "Patient trust funds" are funds received by any health care facility which belong to patients and are required by any state or federal statute or regulation to be kept in a separate trust bank account for the benefit of such patients.

C. This section shall not be construed to prevent a prosecution pursuant to Chapter 5 (§ 18.2-77.*1* et seq.) of Title 18.2.

§ 32.1-321.4. False statement or representation in applications for eligibility or for use in determining rights to benefits; concealment of facts; criminal penalty.

A. Any person who engages in the following activities, on behalf of himself or another, shall be guilty of larceny and, in addition to the penalties provided in §§ 18.2-95 ~~and~~ *through* 18.2-96 as applicable, may be fined an amount not to exceed $10,000:

1. Knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact in an application for eligibility, benefits or payments under medical assistance;

2. Knowingly and willfully falsifying, concealing or covering up by any trick, scheme, or device a material fact in connection with an application for eligibility, benefits or payments;

3. Knowingly and willfully concealing or failing to disclose any event affecting the initial or continued right of any individual to any benefits or payment with an intent to secure fraudulently such benefits or payment in a greater amount or quantity than is authorized or when no such benefit or payment is authorized;

4. Knowingly and willfully converting any benefits or payment received pursuant to an application for another person and receipt of benefits or payment on behalf of such other person to use other than for the health and welfare of the other person; or

5. Knowingly and willfully failing to notify the local department of social services, through whom medical assistance benefits were obtained, of changes in the circumstances of any recipient or applicant which could result in the reduction or termination of medical assistance services.

B. It shall be the duty of the Director of Medical Assistance Services or his designee to enforce the provisions of this section. A warrant or summons may be issued for violations of which the Director or his designee has knowledge. Trial for violation of this section shall be held in the county or city in which the application for medical assistance was made or obtained.

§ 37.1-20.3. Background check required.

A. As a condition of employment, the Department shall require any individual who (i) accepts a position of employment at a state facility as defined in § 37.1-1 and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant.

For purposes of clause (i) above, the Department shall not hire for compensated employment persons who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking

as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77.*1* et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an individual is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

B. Those individuals listed in clause (i) of subsection A also shall provide the state facility or Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

C. The Board may promulgate regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department, at its option, decides to pay such cost.

§ 37.1-183.3. Background checks required.

A. Every provider licensed pursuant to this chapter shall, on and after July 1, 1999, require any applicant who accepts employment in any direct consumer care position to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsections B and D, no provider licensed pursuant to this chapter shall hire for compensated employment persons who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77.*1* et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of

incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this chapter. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the authorized officer or director of a provider licensed pursuant to this chapter shall not be disseminated except as provided in this section.

B. Notwithstanding the provisions of subsection A, a provider may hire for compensated employment at adult substance abuse treatment facilities persons who were convicted of a misdemeanor violation relating to (i) unlawful hazing as set out in § 18.2-56; or (ii) reckless handling of a firearm as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects as set out in § 18.2-51.3; (b) threat as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor as set out in *former* § 18.2-92 *or as set out in § 18.2-89.6 or § 18.2-89.9*; or (d) possession of burglarious tools as set out in § 18.2-94; or any felony violation relating to the distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections ~~H 1 and H 2~~ *J or K* of § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a screening assessment, that such criminal behavior was substantially related to the applicant's use of substances, and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and substance use, abuse or addiction histories.

C. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection B to assess whether such persons have been successfully rehabilitated and are not a risk to consumers based on their criminal history backgrounds and substance use, abuse or addiction histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any such supplementary information as the provider or screening contractor may require or the applicant wishes to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision, together with a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of such screening shall be paid by the applicant, unless the licensed provider decides, at its option, to pay such cost.

D. Notwithstanding the provisions of subsection A, a provider may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment in a direct consumer care position.

E. Providers licensed pursuant to this chapter shall also require, as a condition of employment for all such applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515.

F. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this chapter, at its option, decides to pay such cost.

G. As used in this section, the term "direct consumer care position" means any position with a job description that includes responsibility for (i) treatment, case management, health, safety, development or well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.

H. As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse treatment position to another such position within the same licensee licensed pursuant to this chapter, or (ii) new employment in an adult substance abuse treatment position in another office or program licensed pursuant to this chapter if the person employed in a licensed program

prior to July 1, 1999, has had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes, but is not limited to, (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same licensee licensed pursuant to this chapter, or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same licensee licensed pursuant to this chapter for which the person has previously worked in an adult substance abuse treatment position.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 37.1-197.2. Background checks required.

A. Every operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, and agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department shall require any applicant who accepts employment in any direct consumer care position with the operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding such applicant. Except as otherwise provided in subsections B or D, no operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, and agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department shall hire for compensated employment persons who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77.*1* et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting (a) authorized officer or director of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department or (b) executive director or personnel director serving the operating community services board, administrative policy board, local government department with a policy-advisory board or the behavioral health authority. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to (a) the

authorized officer or director of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department or (b) the executive director or personnel director serving any operating community services board, administrative policy board, local government department with a policy-advisory board or behavioral health authority shall not be disseminated except as provided in this section.

B. Notwithstanding the provisions of subsection A, the operating community services board, administrative policy board, local government department with a policy advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 that provides services under contract with a community services board, behavioral health authority or local government department may hire for compensated employment at adult substance abuse treatment facilities persons who were convicted of a misdemeanor violation relating to (i) unlawful hazing as set out in § 18.2-56; or (ii) reckless handling of a firearm as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects as set out in § 18.2-51.3; (b) threat as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor as set out in *former* § 18.2-92 *or as set out in § 18.2-89.6 or § 18.2-89.9*; or (d) possession of burglarious tools as set out in § 18.2-94; or any felony violation relating to the distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections ~~H 1 or H 2~~ *J or K* of § 18.2-248; or an equivalent offense in another state, if the prospective employer determines, based upon a screening assessment, that such criminal behavior was substantially related to the applicant's use of substances, and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and substance use, abuse or addiction histories.

C. The operating community services board, administrative policy board, local government department with a policy advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 that provides services under contract with a community services board, behavioral health authority or local government department and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection B to assess whether such persons have been successfully rehabilitated and are not a risk to consumers based on their criminal history backgrounds and substance use, abuse or addiction histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any such supplementary information as the prospective employer or screening contractor may require or the applicant wishes to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision, together with a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of such screening shall be paid by the applicant, unless the board, authority, local department or licensed agency decides, at its option, to pay such cost.

D. Notwithstanding the provisions of subsection A, an operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment in a direct consumer care position.

E. Operating community services boards, administrative policy boards, local government departments with policy-advisory boards, behavioral health authorities and agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department shall also require, as a condition of employment for all such applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515.

F. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department, at its option, decides to pay such cost.

G. As used in this section, the term "direct consumer care position" means any position with a job

description that includes responsibility for (i) treatment, case management, health, safety, development or well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.

H. As used in this section, "hire for compensated employment" does not include (i) a promotion from one substance abuse treatment position to another such position within the same licensee licensed pursuant to this chapter, or (ii) new employment in a substance abuse treatment position in another office or program licensed pursuant to this chapter if the person employed in a licensed program prior to July 1, 1999, has had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" does include, but is not limited to, (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same community services board, local government department, behavioral health authority, or licensed contract agency or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same community services board, local government department, behavioral health authority or licensed contract agency for which the person has previously worked in an adult substance abuse treatment position.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 53.1-40.01. Conditional release of geriatric prisoners.

Any person serving a sentence imposed upon a conviction for a felony offense, other than a ~~Class 1~~ *capital* felony, (i) who has reached the age of ~~sixty-five~~*65* or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of ~~sixty~~ *60* or older and who has served at least ~~ten~~ *10* years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this section.

§ 53.1-151. Eligibility for parole.

A. Except as herein otherwise provided, every person convicted of a felony and sentenced and committed by a court under the laws of this Commonwealth to the Department of Corrections, whether or not such person is physically received at a Department of Corrections facility, or as provided for in § 19.2-308.1:

1. For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment imposed, or after serving ~~twelve~~ *12* years of the term of imprisonment imposed if one-fourth of the term of imprisonment imposed is more than ~~twelve~~ *12* years;

2. For the second time, shall be eligible for parole after serving one-third of the term of imprisonment imposed, or after serving ~~thirteen~~ *13* years of the term of imprisonment imposed if one-third of the term of imprisonment imposed is more than ~~thirteen~~ *13* years;

3. For the third time, shall be eligible for parole after serving one-half of the term of imprisonment imposed, or after serving ~~fourteen~~ *14* years of the term of imprisonment imposed if one-half of the term of imprisonment imposed is more than ~~fourteen~~ *14* years;

4. For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the term of imprisonment imposed, or after serving ~~fifteen~~ *15* years of the term of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than ~~fifteen~~ *15* years.

For the purposes of subdivisions 2, 3 and 4 of subsection A and for the purposes of subsections B1 and B2, prior commitments shall include commitments to any correctional facility under the laws of any state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction, kidnapping, burglary, felonious assault or wounding, or manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, if such would be a felony if committed in the Commonwealth. Only prior commitments interrupted by a person's being at liberty, or resulting from the commission of a felony while in a correctional facility of the Commonwealth, of any other state or of the United States, shall be included in determining the number of times such person has been convicted, sentenced and committed for the purposes of subdivisions 2, 3 and 4 of subsection A. "At liberty" as used herein shall include not only freedom without any legal restraints, but shall also include release pending trial, sentencing or appeal, or release on probation or parole or escape. In the case of terms of imprisonment to be served consecutively, the total time imposed shall constitute the term of the imprisonment; in the case of terms of imprisonment to be served concurrently, the longest term imposed shall be the term of imprisonment. In any case in which a parolee commits an offense while on parole, only the sentence imposed for such offense and not the sentence or sentences or any part thereof from which he was paroled shall constitute the term of imprisonment.

The Department of Corrections shall make all reasonable efforts to determine prior convictions and commitments of each inmate for the enumerated offenses.

B. Persons sentenced to die shall not be eligible for parole. Any person sentenced to life

imprisonment who escapes from a correctional facility or from any person in charge of his custody shall not be eligible for parole.

B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape or (iii) robbery by the presenting of firearms or other deadly weapon, or any combination of the offenses specified in subdivisions (i), (ii) or (iii) when such offenses were not part of a common act, transaction or scheme shall not be eligible for parole. In the event of a determination by the Department of Corrections that an individual is not eligible for parole under this subsection, the Parole Board may in its discretion, review that determination, and make a determination for parole eligibility pursuant to regulations promulgated by it for that purpose. Any determination of the Parole Board of parole eligibility thereby shall supersede any prior determination of parole ineligibility by the Department of Corrections under this subsection.

B2. Any person convicted of three separate felony offenses of manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in this section between each conviction, shall not be eligible for parole.

C. Any person sentenced to life imprisonment for the first time shall be eligible for parole after serving ~~fifteen~~ *15* years, except that if such sentence was for a ~~Class 1~~ *capital* felony violation or the first degree murder of a child under the age of eight in violation of § 18.2-32, he shall be eligible for parole after serving ~~twenty-five~~*25* years, unless he is ineligible for parole pursuant to subsection B1 or B2.

D. A person who has been sentenced to two or more life sentences, except a person to whom the provisions of subsection B1, B2, or E of this section are applicable, shall be eligible for parole after serving ~~twenty~~ *20* years of imprisonment, except that if either such sentence, or both, was or were for a ~~Class 1~~ *capital* felony violation, and he is not otherwise ineligible for parole pursuant to subsection B1, B2, or E of this section, he shall be eligible for parole only after serving ~~thirty~~ *30* years.

E. A person convicted of an offense and sentenced to life imprisonment after being paroled from a previous life sentence shall not be eligible for parole.

E1. Any person who has been convicted of murder in the first degree, rape in violation of § 18.2-61, forcible sodomy, animate or inanimate object sexual penetration or aggravated sexual battery and who has been sentenced to a term of years shall, upon a first commitment to the Department of Corrections, be eligible for parole after serving two-thirds of the term of imprisonment imposed or after serving ~~fourteen~~ *14* years of the term of imprisonment imposed if two-thirds of the term of imprisonment imposed is more than ~~fourteen~~ *14* years. If such person has been previously committed to the Department of Corrections, such person shall be eligible for parole after serving three-fourths of the term of imprisonment imposed or after serving ~~fifteen~~ *15* years of the terms of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than ~~fifteen~~ *15* years.

F. If the sentence of a person convicted of a felony and sentenced to the Department is partially suspended, he shall be eligible for parole based on the portion of such sentence execution which was not suspended.

G. The eligibility time for parole as specified in subsections A, C and D of this section may be modified as provided in §§ 53.1-191, 53.1-197 and 53.1-198.

H. The time for eligibility for parole as specified in subsection D of this section shall apply only to those criminal acts committed on or after July 1, 1976.

I. The provisions of subdivisions 2, 3 and 4 of subsection A shall apply only to persons committed to the Department of Corrections on or after July 1, 1979, but such persons' convictions and commitments shall include all felony convictions and commitments without regard to the date of such convictions and commitments.

§ 54.1-2989. Willful destruction, concealment, etc., of declaration or revocation; penalties.

Any person who willfully conceals, cancels, defaces, obliterates, or damages the advance directive or Durable Do Not Resuscitate Order of another without the declarant's or patient's consent or the consent of the person authorized to consent for the patient or who falsifies or forges a revocation of the advance directive or Durable Do Not Resuscitate Order of another, thereby causing life-prolonging procedures to be utilized in contravention of the previously expressed intent of the patient or a Durable Do Not Resuscitate Order ~~shall be~~ *is* guilty of a Class 6 felony.

Any person who falsifies or forges the advance directive or Durable Do Not Resuscitate Order of another, or willfully conceals or withholds personal knowledge of the revocation of an advance directive or Durable Do Not Resuscitate Order, with the intent to cause a withholding or withdrawal of life-prolonging procedures, contrary to the wishes of the declarant or a patient, and thereby, because of such act, directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, ~~shall be~~ *is* guilty of a Class ~~2~~ *1* felony.

§ 58.1-4018. Prohibited actions; penalty.

Any person who wrongfully and fraudulently uses, disposes of, conceals or embezzles any public money or funds associated with the operation of the lottery ~~shall be~~ *is* guilty of a Class 2 felony. Any person who wrongfully and fraudulently tampers with any equipment or machinery used in the operation of the lottery ~~shall be~~ *is* guilty of a Class 2 felony. Any person who makes inaccurate entries regarding a financial accounting of the lottery in order to conceal the truth, defraud the Commonwealth and obtain money to which he is not entitled ~~shall be~~ *is* guilty of ~~a Class 2 felony~~ *larceny* .

§ 63.2-525. Payment by Department for legal services..

Notwithstanding any provision of §§ 2.2-2814, 2.2-2815, 2.2-2816, 2.2-2823, 2.2-2824, 2.2-2825 or § 2.2-2826 to the contrary, whenever there shall be authorized by law an assistant attorney for the Commonwealth and such assistant's duties consist of the prosecution of public assistance fraud cases pursuant to §§ 18.2-95~~,~~ *through* 18.2-96, 63.2-502, 63.2-513, 63.2-522, 63.2-523 or § 63.2-524, the Department may, with the consent of the attorney for the Commonwealth of the jurisdiction, contract with the county or city or combination thereof for whom such assistant attorney for the Commonwealth is authorized regarding the duties of such assistant and regarding the payment by the Department of the entire salary, expenses, including secretarial services, and allowances of such assistant, as shall be approved by the Compensation Board, for the entire time devoted to these duties. Any such contract may provide that the county, city, or combination thereof shall pay the entire amount of such salary, expenses, and allowances and that the Department shall reimburse such county or city therefor. The amount of such salary, expenses, and allowances shall be set by the Compensation Board as provided by law.

§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77*.1* et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction and (ii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

§ 63.2-1726. Background check required; children's residential facilities..

A. As a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services; Education; Military Affairs; or Mental Health, Mental Retardation and Substance Abuse Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 1994, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 1994, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 1994; to submit to fingerprinting and to provide personal descriptive

information, to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's fitness to have responsibility for the safety and well-being of children. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. Prior to permitting an applicant to begin his duties, the children's residential facility shall obtain the statement or affirmation from the applicant and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant meets the criteria to have responsibility for the safety and well-being of children based on whether or not the applicant has ever been convicted of or is the subject of pending charges for the following crimes: murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, extortion by threat as set out in § 18.2-59, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77*.1* et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379, or an equivalent offense in another state. If the applicant is denied employment, or the opportunity to volunteer or provide services at a children's residential facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to provide services pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position or denying the applicant unsupervised access to clients pending a final determination of the applicant's fitness to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

B. Those individuals listed in clauses (i), (ii) and (iii) of subsection A shall also authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall submit the request for information to the central registry prior to permitting an applicant to begin his duties. The children's residential facility shall obtain a copy of the information from the central registry within ~~twenty-one~~ *21* days of the applicant beginning his duties. The provisions of this subsection also shall apply to every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice.

C. The Boards of Social Services; Education; Juvenile Justice; and Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.

2. That § 18.2-67.2:1, §§ 18.2-77 through 18.2-81, and §§ 18.2-90, 18.2-91 and 18.2-92 of the Code of Virginia are repealed.

3. That the Virginia State Crime Commission shall work with the Virginia Criminal Sentencing Commission to determine what changes need to be made to the sentencing guidelines to

incorporate the provisions of this bill. No changes shall be made to the sentencing guidelines until the first enactment of this bill becomes effective.

4. That the provisions of the first and second enactment clauses of this act shall become effective on July 1, 2005.

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