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HOUSE BILL NO. 1054**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 13, 2004)

(Patron Prior to Substitute—Delegate Albo)

A BILL to amend and reenact §§ 9.1-902, 15.2-1724, 16.1-272, 17.1-805, 18.2-62, 18.2-63, 18.2-67.5:2, 18.2-67.8, 18.2-345, 18.2-346, 18.2-346.1, 18.2-348, 18.2-356, 18.2-359, 18.2-360, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-371, 18.2-374.3, 19.2-268.2, 19.2-271.2, 19.2-299, 32.1-58, 32.1-126.01, 32.1-162.9:1, 37.1-20.3, 37.1-183.3, 37.1-197.2, 63.2-1719, 63.2-1726, and 63.2-1727 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 8 of Title 18.2 a section numbered 18.2-361.1 and to repeal § 18.2-344 of the Code of Virginia, relating to sex offenses; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-902, 15.2-1724, 16.1-272, 17.1-805, 18.2-62, 18.2-63, 18.2-67.5:2, 18.2-67.8, 18.2-345, 18.2-346, 18.2-346.1, 18.2-348, 18.2-356, 18.2-359, 18.2-360, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-371, 18.2-374.3, 19.2-268.2, 19.2-271.2, 19.2-299, 32.1-58, 32.1-126.01, 32.1-162.9:1, 37.1-20.3, 37.1-183.3, 37.1-197.2, 63.2-1719, 63.2-1726, and 63.2-1727 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding in Article 3 of Chapter 8 of Title 18.2 a section numbered 18.2-361.1 as follows:

§ 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, 18.2-67.2:1, 18.2-90 with the intent to commit rape, § 18.2-374.1 or subsection D of § 18.2-374.1:1; or a third or subsequent conviction of (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, § 18.2-361.1 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, 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) or (iii) of § 18.2-48, §§ 18.2-361, *subsections A and C of § 18.2-361.1*, § 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.

§ 15.2-1724. Police and other officers may be sent beyond territorial limits.

Whenever the necessity arises (i) for the enforcement of laws designed to control or prohibit the use or sale of controlled drugs as defined in § 54.1-3401 or laws contained in Article 3 (§ 18.2-344 18.2-345 et seq.) of Chapter 8 of Title 18.2, (ii) in response to any law-enforcement emergency involving any immediate threat to life or public safety, (iii) during the execution of the provisions of § 37.1-67.01 or § 37.1-67.1 relating to orders for temporary detention or emergency custody for mental health evaluation or (iv) during any emergency resulting from the existence of a state of war, internal disorder, or fire, flood, epidemic or other public disaster, the police officers and other officers, agents and employees of any locality and the police of any state-supported institution of higher learning appointed pursuant to § 23-233 may, together with all necessary equipment, lawfully go or be sent beyond the territorial limits of such locality or such state-supported institution of higher learning to any point within or without the Commonwealth to assist in meeting such emergency or need, or while enroute to a part of the jurisdiction which is only accessible by roads outside the jurisdiction. However, the police of any state-supported institution of higher learning may be sent only to a locality within the Commonwealth, or locality outside the Commonwealth, whose boundaries are contiguous with the locality in which such institution is located. No member of a police force of any state-supported institution of higher learning shall be sent beyond the territorial limits of the locality in which such

60 institution is located unless such member has met the requirements established by the Department of
61 Criminal Justice Services as provided in subdivision 2 (i) of § 9.1-102.

62 In such event the acts performed for such purpose by such police officers or other officers, agents or
63 employees and the expenditures made for such purpose by such locality or a state-supported institution
64 of higher learning shall be deemed conclusively to be for a public and governmental purpose, and all of
65 the immunities from liability enjoyed by a locality or a state-supported institution of higher learning
66 when acting through its police officers or other officers, agents or employees for a public or
67 governmental purpose within its territorial limits shall be enjoyed by it to the same extent when such
68 locality or a state-supported institution of higher learning within the Commonwealth is so acting, under
69 this section or under other lawful authority, beyond its territorial limits.

70 The police officers and other officers, agents and employees of any locality or a state-supported
71 institution of higher learning when acting hereunder or under other lawful authority beyond the territorial
72 limits of such locality or such state-supported institution of higher learning shall have all of the
73 immunities from liability and exemptions from laws, ordinances and regulations and shall have all of the
74 pension, relief, disability, workers' compensation and other benefits enjoyed by them while performing
75 their respective duties within the territorial limits of such locality or such state-supported institution of
76 higher learning.

77 § 16.1-272. Power of circuit court over juvenile offender.

78 A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary
79 charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise
80 provided with regard to sentencing. Upon a finding of guilty of any charge other than capital murder,
81 the court shall fix the sentence without the intervention of a jury.

82 1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes
83 the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender
84 under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii)
85 the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of
86 the sentence to be served in the same manner as provided for adults be suspended conditioned upon
87 successful completion of such terms and conditions as may be imposed in a juvenile court upon
88 disposition of a delinquency case including, but not limited to, commitment under subdivision 14 of
89 § 16.1-278.8 or § 16.1-285.1.

90 2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile
91 offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with
92 the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the
93 juvenile court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion
94 impose an adult sentence and suspend the sentence conditioned upon successful completion of such
95 terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

96 3. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal
97 with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the
98 juvenile court.

99 B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile
100 court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation
101 officer.

102 C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under
103 the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ 18.2-61, 18.2-63,
104 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a
105 minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of
106 § 18.2-361, *subsection C of § 18.2-361.1* or subsection B of § 18.2-366, the clerk shall make the report
107 required by § 19.2-390 to the Sex Offender and Crimes Against Minors Registry established pursuant to
108 Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

109 § 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

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

118 1. The midpoint of the initial recommended sentencing range for first degree murder, second degree
119 murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual
120 battery, shall be further increased by (i) 125 percent in cases in which the defendant has no previous
121 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, 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 § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92 or § 18.2-93; any felony 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 C of § 18.2-361.1*; 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.

§ 18.2-62. Testing of certain persons for human immunodeficiency virus.

A. As soon as practicable following arrest, the attorney for the Commonwealth may request, after consultation with any victim, that any person charged with any crime involving sexual assault pursuant

183 to this article or any offenses against children as prohibited by §§ 18.2-361, 18.2-361.1, 18.2-366,
184 18.2-370, and 18.2-370.1 be requested to submit to testing for infection with human immunodeficiency
185 virus. The person so charged shall be counseled about the meaning of the test, about acquired
186 immunodeficiency syndrome, and about the transmission and prevention of infection with human
187 immunodeficiency virus.

188 If the person so charged refuses to submit to the test or the competency of the person to consent to
189 the test is at issue, the court with jurisdiction of the case shall hold a hearing to determine whether there
190 is probable cause that the individual has committed the crime with which he is charged. If the court
191 finds probable cause, the court shall order the accused to undergo testing for infection with human
192 immunodeficiency virus. The court may enter such an order in the absence of the defendant if the
193 defendant is represented at the hearing by counsel or a guardian ad litem. The court's finding shall be
194 without prejudice to either the Commonwealth or the person charged and shall not be evidence in any
195 proceeding, civil or criminal.

196 B. Upon conviction, or adjudication as delinquent in the case of a juvenile, of any crime involving
197 sexual assault pursuant to this article or any offenses against children as prohibited by
198 §§ 18.2-361, 18.2-361.1, 18.2-366, 18.2-370, and 18.2-370.1, the attorney for the Commonwealth may,
199 after consultation with any victim and, upon the request of any victim shall, request and the court shall
200 order the defendant to submit to testing for infection with human immunodeficiency virus. Any test
201 conducted following conviction shall be in addition to such tests as may have been conducted following
202 arrest pursuant to subsection A.

203 C. Confirmatory tests shall be conducted before any test result shall be determined to be positive.
204 The results of the tests for infection with human immunodeficiency virus shall be confidential as
205 provided in § 32.1-36.1; however, the Department of Health shall also disclose the results to any victim
206 and offer appropriate counseling as provided by subsection B of § 32.1-37.2. The Department shall
207 conduct surveillance and investigation in accordance with § 32.1-39.

208 The results of such tests shall not be admissible as evidence in any criminal proceeding.

209 The cost of such tests shall be paid by the Commonwealth and taxed as part of the cost of such
210 criminal proceedings.

211 § 18.2-63. Carnal knowledge of child between 13 and 15 years of age.

212 A. If any person carnally knows, without the use of force, a child ~~thirteen~~ 13 years of age or older
213 but under ~~fifteen~~ 15 years of age, such person ~~shall be~~ is guilty of a Class 4 felony.

214 B. However, if such child is ~~thirteen~~ 13 years of age or older but under ~~fifteen~~ 15 years of age and
215 consents to sexual intercourse and the accused is a minor and such consenting child is three years or
216 more the accused's junior, the accused ~~shall be~~ is guilty of a Class 6 felony. If such consenting child is
217 less than three years the accused's junior, the accused ~~shall be~~ is guilty of a Class 4 misdemeanor.

218 In calculating whether such child is three years or more a junior of the accused minor, the actual
219 dates of birth of the child and the accused, respectively, shall be used.

220 C. For the purposes of this section, (i) a child under the age of ~~thirteen~~ 13 years shall not be
221 considered a consenting child and (ii) "carnal knowledge" includes the acts of sexual intercourse,
222 cunnilingus, fellatio, anallungus, anal intercourse, and animate and inanimate object sexual penetration.

223 § 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.

224 A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the
225 offenses specified in subsection B of this section and one of the offenses specified in subsection B of
226 § 18.2-67.5:3 when such offenses were not part of a common act, transaction or scheme, and who has
227 been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or
228 subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and
229 shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury
230 or judge before whom the person is tried, that he has been previously convicted of at least one of the
231 specified offenses.

232 B. The provisions of subsection A shall apply to felony convictions for:

233 1. Carnal knowledge of a child between ~~thirteen~~ 13 and ~~fifteen~~ 15 years of age in violation of
234 § 18.2-63 when the offense is committed by a person over the age of ~~eighteen~~ 18;

235 2. Carnal knowledge of certain minors in violation of § 18.2-64.1;

236 3. Aggravated sexual battery in violation of § 18.2-67.3;

237 4. Crimes against nature in violation of subsection B of § 18.2-361, or subsections C of § 18.2-361.1;

238 5. Adultery or fornication with one's own child or grandchild in violation of § 18.2-366;

239 6. Taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or

240 7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to § 18.2-22.

241 C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under
242 the laws of any state or the United States that are substantially similar to those listed in subsection B
243 and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile
244 offense is substantially similar to those listed in subsection B, the offense would be a felony if

committed by an adult in the Commonwealth and the offense was committed less than ~~twenty~~ 20 years before the second offense.

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.

§ 18.2-67.8. Closed preliminary hearings.

In preliminary hearings for offenses charged under this article or under §§ 18.2-361, *18.2-361.1*, 18.2-366, 18.2-370 or § 18.2-370.1, the court may, on its own motion or at the request of the Commonwealth, the complaining witness, the accused, or their counsel, exclude from the courtroom all persons except officers of the court and persons whose presence, in the judgment of the court, would be supportive of the complaining witness or the accused and would not impair the conduct of a fair hearing.

§ 18.2-345. Lewd and lascivious behavior in a public place.

If any persons, ~~not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, each of them shall be~~ Any person who engages in lewd and lascivious behavior in a public place is guilty of a Class 3 misdemeanor; ~~and upon a repetition of the offense, and for a first conviction thereof, each of them shall be guilty and of a Class 1 misdemeanor for any subsequent conviction.~~

§ 18.2-346. Being a prostitute or prostitution.

A. Any person who, for money or its equivalent, commits adultery, fornication, or any act in violation of ~~§ 18.2-361 of carnal knowledge as defined in subdivision C (ii) of § 18.2-63~~, or offers to commit adultery, fornication, or any act in violation of ~~§ 18.2-361 of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63~~, and thereafter does any substantial act in furtherance thereof, ~~shall be is~~ guilty of being a prostitute, or prostitution, ~~which shall be punishable as a Class 1 misdemeanor.~~

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated above and thereafter does any substantial act in furtherance thereof ~~shall be is~~ guilty of solicitation of prostitution ~~and shall be guilty of, a Class 1 misdemeanor.~~

§ 18.2-346.1. Testing of convicted prostitutes for infection with human immunodeficiency virus.

As soon as practicable following conviction of any person for violation of § 18.2-346, ~~or § 18.2-361~~, or § 18.2-361.1, such person shall be required to submit to testing for infection with human immunodeficiency virus. The convicted person shall receive counseling from personnel of the Department of Health concerning (i) the meaning of the test, (ii) acquired immunodeficiency syndrome and (iii) the transmission and prevention of infection with human immunodeficiency virus.

Tests shall be conducted to confirm any initial positive test results before any test result shall be determined to be positive for infection. The results of such test shall be confidential as provided in § 32.1-36.1 and shall be disclosed to the person who is the subject of the test and to the Department of Health as required by § 32.1-36. The Department shall conduct surveillance and investigation in accordance with the requirements of § 32.1-39.

The results of the test shall not be admissible in any criminal proceeding related to prostitution.

The cost of the test shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

§ 18.2-348. Aiding prostitution or illicit sexual intercourse.

It shall be unlawful for any person or any officer, employee or agent of any firm, association or corporation, with knowledge of, or good reason to believe, the immoral purpose of such visit, to take or transport or assist in taking or transporting, or offer to take or transport on foot or in any way, any person to a place, whether within or without any building or structure, used or to be used for the purpose of lewdness, assignation or prostitution within this Commonwealth; or procure or assist in procuring for the purpose of illicit sexual intercourse, or any act ~~violative of § 18.2-361 of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63~~, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution.

§ 18.2-356. Receiving money for procuring person.

Any person who shall receive any money or other valuable thing for or on account of procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse, or any act in violation of ~~§ 18.2-361 shall be of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63~~, is guilty of a Class 4 felony.

§ 18.2-359. Venue where any person transported for criminal sexual assault, attempted criminal sexual assault, or purposes of unlawful sexual intercourse, crimes against nature, and indecent liberties with children.

A. Any person transporting or attempting to transport through or across this Commonwealth, any person for the purposes of unlawful sexual intercourse or prostitution, or for the purpose of committing any crime specified in § 18.2-361, *§ 18.2-361.1* or § 18.2-370, may be presented, indicted, tried, and convicted in any county or city in which any part of such transportation occurred.

B. Venue for the trial of any person charged with committing or attempting to commit criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of this title may be had in the county or city in which such crime is alleged to have occurred or in any county or city through which the victim was transported by the defendant prior to the commission of such offense.

§ 18.2-360. Competency of persons to testify in prosecutions under §§ 18.2-355 through 18.2-361.1.

Any male or female referred to in §§ 18.2-355 through ~~18.2-361~~18.2-361.1 shall be a competent witness in any prosecution under such sections to testify to any and all matters, including conversations by or with the accused with third persons in his or her presence, notwithstanding he or she may have married the accused either before or after the violation of any of the provisions of this section; but such witness shall not be compelled to testify after such marriage.

§ 18.2-361.1. Crimes against nature.

A. If any person carnally knows in any manner any brute animal, he or she is guilty of a Class 6 felony.

B. If any person carnally knows in a public place any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she is guilty of a Class 6 felony.

C. Any person who carnally knows by the anus or by or with the mouth or any act of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63, his daughter or granddaughter, son or grandson, brother or sister, or father or mother is guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least 13 but less than 18 years of age at the time of the offense, such parent or grandparent is guilty of a Class 3 felony.

§ 18.2-370. Taking indecent liberties with children; penalties.

A. Any person ~~eighteen~~ 18 years of age or over, who, with lascivious intent, ~~shall~~ knowingly and intentionally ~~commit~~ commits any of the following acts with any child under the age of ~~fourteen~~ 14 years ~~shall be~~ is guilty of a Class 5 felony:

(1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or

(2) [Repealed.]

(3) Propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse or any act ~~constituting an offense under § 18.2-361~~ of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this section.

B. Any person ~~eighteen~~ 18 years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of ~~eighteen~~ 18 years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material; ~~shall be~~ is guilty of a Class 5 felony.

C. Any person who is convicted of a second or subsequent violation of this section ~~shall be~~ is guilty of a Class 4 felony; provided that (i) the offenses were not part of a common act, transaction or scheme, (ii) the accused was at liberty as defined in § 53.1-151 between each conviction, and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

§ 18.2-370.1. Taking indecent liberties with child by person in custodial or supervisory relationship; penalties.

A. Any person ~~eighteen~~ 18 years of age or older who maintains a custodial or supervisory relationship over a child under the age of ~~eighteen~~ 18, including but not limited to the parent, step-parent, grandparent, step-grandparent, or who stands in loco parentis with respect to such child and is not legally married to such child, and who, with lascivious intent, knowingly and intentionally (i) proposes that any such child feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or genital parts of the child, ~~or~~ (ii) proposes to such child the performance of an act of sexual intercourse or any act ~~constituting an offense under § 18.2-361~~, ~~or of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63~~, (iii) exposes his or her sexual or genital parts to such child, ~~or~~ (iv) proposes that any such child expose his or her sexual or genital parts to such person, ~~or~~ (v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or genital parts with another person, or (vi) sexually abuses the child as defined in § 18.2-67.10 ~~(6)~~, ~~shall be~~ is guilty of a Class 6 felony.

B. Any person who is convicted of a second or subsequent violation of this section ~~shall be~~ is guilty of a Class 5 felony; provided that (i) the offenses were not part of a common act, transaction or scheme, (ii) the accused was at liberty as defined in § 53.1-151 between each conviction, and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously

convicted of a violation of this section.

§ 18.2-370.2. Sex offenses prohibiting proximity to children.

A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, § 18.2-361.1, or subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii) subsection A (iii) of § 18.2-61, §§ 18.2-63, 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1 of § 18.2-67.2, or subdivision A 1 or A 2 (a) of § 18.2-67.3, or §§ 18.2-370, 18.2-370.1, clause (ii) of § 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379.

B. Every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school. A violation of this section is punishable as a Class 6 felony.

§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty; abandoned infant.

Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228, or (ii) engages in consensual sexual intercourse, *or any act of carnal knowledge, as defined in subdivision C (ii) of § 18.2-63*, with a child 15 or older not his spouse, child, or grandchild, ~~shall be~~ *is* guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, 18.2-66, and 18.2-347.

If the prosecution under this section is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the child's life.

§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.

A. It shall be unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or § 18.2-374.1. A violation of this section ~~shall be~~ *is* punishable as a Class 6 felony.

B. It shall be unlawful for any person over the age of 18 to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child less than 18 years of age for (i) any activity in violation of §§ 18.2-355, 18.2-358, 18.2-361, *18.2-361.1*, or § 18.2-370 or *18.2-371*, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1. As used in this subsection, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications system. A violation of this section ~~shall be~~ *is* punishable as a Class 5 felony.

§ 19.2-268.2. Recent complaint hearsay exception.

Notwithstanding any other provision of law, in any prosecution for criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a violation of §§ 18.2-361, *18.2-361.1*, 18.2-366, 18.2-370 or § 18.2-370.1, the fact that the person injured made complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.

§ 19.2-271.2. Testimony of husband and wife in criminal cases.

In criminal cases husband and wife shall be allowed, and, subject to the rules of evidence governing other witnesses and subject to the exception stated in § 8.01-398, may be compelled to testify in behalf of each other, but neither shall be compelled to be called as a witness against the other, except (i) in the case of a prosecution for an offense committed by one against the other or against a minor child of either, (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361 *or § 18.2-361.1*) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371). The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by any attorney.

In the prosecution for a criminal offense as set forth in (i), (ii) or (iii) above, each shall be a competent witness except as to privileged communications.

429 § 19.2-299. Investigations and reports by probation officers in certain cases.

430 A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a
431 person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or
432 § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted
433 sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is
434 adjudged guilty of such charge, the court may, or on motion of the defendant shall, or (ii) upon a felony
435 charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between
436 the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea
437 agreement or is found guilty by the court after a plea of not guilty, or (iii) the court shall when a person
438 is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a
439 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,
440 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, 18.2-361.1,
441 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
442 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
443 probation officer of such court to thoroughly investigate and report upon the history of the accused,
444 including a report of the accused's criminal record as an adult and available juvenile court records, and
445 all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to
446 be imposed. The probation officer, after having furnished a copy of this report at least five days prior to
447 sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use,
448 shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep
449 such report confidential. The probation officer shall be available to testify from this report in open court
450 in the presence of the accused, who shall have been advised of its contents and be given the right to
451 cross-examine the investigating officer as to any matter contained therein and to present any additional
452 facts bearing upon the matter. The report of the investigating officer shall at all times be kept
453 confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed
454 shall be made available only by court order and shall be sealed upon final order by the court, except
455 that such reports or copies thereof shall be available at any time to any criminal justice agency, as
456 defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused
457 is referred for treatment by the court or by probation and parole services; and to counsel for any person
458 who has been indicted jointly for the same felony as the person subject to the report. Any report
459 prepared pursuant to the provisions hereof shall without court order be made available to counsel for the
460 person who is the subject of the report if that person is charged with a felony subsequent to the time of
461 the preparation of the report. The presentence report shall be in a form prescribed by the Department of
462 Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a
463 form prescribed by the Department of Corrections.

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

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

475 D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense
476 for which the defendant was convicted was a felony, not a capital offense, committed on or after
477 January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to
478 § 18.2-251.01.

479 § 32.1-58. Persons convicted of certain crimes to be examined, tested and treated.

480 Each person convicted of a violation of § 18.2-346, ~~or~~ § 18.2-361, *or* § 18.2-361.1 shall be examined
481 and tested for venereal disease and treated if necessary.

482 § 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited;
483 criminal records check required; suspension or revocation of license.

484 A. A licensed nursing home shall not hire for compensated employment, persons who have been
485 convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title
486 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of
487 § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set
488 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
489 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
490 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 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, § 18.2-361.1, 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 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, § 18.2-361.1, 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

552 elapsed since the conviction.

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

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

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

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

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

577 § 37.1-20.3. Background check required.

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

585 For purposes of clause (i) above, the Department shall not hire for compensated employment persons
586 who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of
587 Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in
588 § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set
589 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
590 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
591 felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et
592 seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title
593 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation
594 relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of
595 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
596 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
597 shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes
598 against nature involving children as set out in § 18.2-361 or § 18.2-361.1, taking indecent liberties with
599 children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in
600 § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314,
601 obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in
602 § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in
603 § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a
604 minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of
605 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
606 jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in
607 another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in
608 Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for
609 employment or convicted of any felony violation relating to possession of drugs as set out in Article 1
610 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay
611 required court costs.

612 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
613 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 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 or § 18.2-361.1, 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 § 18.2-92; or (d) possession of

675 burglarious tools as set out in § 18.2-94; or any felony violation relating to the distribution of drugs as
676 set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to
677 subsections H 1 and H 2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider
678 determines, based upon a screening assessment, that such criminal behavior was substantially related to
679 the applicant's use of substances, and that the person has been successfully rehabilitated and is not a risk
680 to consumers based on his criminal history background and substance use, abuse or addiction histories.

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

694 D. Notwithstanding the provisions of subsection A, a provider may hire for compensated employment
695 persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or
696 § 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense
697 in the scope of his employment in a direct consumer care position.

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

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

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

708 H. As used in this section, "hire for compensated employment" does not include (i) a promotion from
709 one adult substance abuse treatment position to another such position within the same licensee licensed
710 pursuant to this chapter, or (ii) new employment in an adult substance abuse treatment position in
711 another office or program licensed pursuant to this chapter if the person employed in a licensed program
712 prior to July 1, 1999, has had no convictions in the five years prior to the application date for
713 employment. As used in this section, "hire for compensated employment" includes, but is not limited to,
714 (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or
715 mental retardation direct consumer care position within the same licensee licensed pursuant to this
716 chapter, or (b) new employment in any mental health or mental retardation direct consumer care position
717 in another office or program of the same licensee licensed pursuant to this chapter for which the person
718 has previously worked in an adult substance abuse treatment position.

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

722 § 37.1-197.2. Background checks required.

723 A. Every operating community services board, administrative policy board, local government
724 department with a policy-advisory board, behavioral health authority, and agency licensed pursuant to
725 Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community
726 services board, behavioral health authority or local government department shall require any applicant
727 who accepts employment in any direct consumer care position with the operating community services
728 board, administrative policy board, local government department with a policy-advisory board,
729 behavioral health authority or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that
730 provides services under contract with a community services board, behavioral health authority or local
731 government department to submit to fingerprinting and provide personal descriptive information to be
732 forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)
733 for the purpose of obtaining national criminal history record information regarding such applicant.
734 Except as otherwise provided in subsections B or D, no operating community services board,
735 administrative policy board, local government department with a policy-advisory board, behavioral health
736 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 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 or § 18.2-361.1, 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 § 18.2-92; 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 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

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

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

821 E. Operating community services boards, administrative policy boards, local government departments
822 with policy-advisory boards, behavioral health authorities and agencies licensed pursuant to Chapter 8
823 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board,
824 behavioral health authority or local government department shall also require, as a condition of
825 employment for all such applicants, written consent and personal information necessary to obtain a
826 search of the registry of founded complaints of child abuse and neglect maintained by the Department of
827 Social Services pursuant to § 63.2-1515.

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

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

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

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

853 § 63.2-1719. Definitions.

854 As used in this subtitle:

855 "Barrier crime" means a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et
856 seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set
857 out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and
858 bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set
859 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 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 *or* § 18.2-361.1, 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 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 *or* § 18.2-361.1, 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.

§ 63.2-1727. Sex offender or child abuser prohibited from operating or residing in family day home.

It shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in the home, has been convicted of a felony in violation of §§ 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355, 18.2-361, ~~18.2-361.1~~, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1 or § 18.2-374.1, or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. A violation of this section shall be punishable as a Class 1 misdemeanor.

2. That § 18.2-344 of the Code of Virginia is repealed.

3. 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 _____ for periods of imprisonment in state adult correctional facilities and is _____ for periods of commitment to the custody of the Department of Juvenile Justice.