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HOUSE BILL NO. 1060

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 15.2-926, 16.1-278.8, 18.2-46.1, 18.2-258, 18.2-308 and 29.1-338 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 8.01-27.3, 8.01-226.8, 8.01-226.9, 15.2-912.2, 15.2-912.3, 15.2-915.2 and 15.2-915.3, by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered 15.2-926.2, by adding sections numbered 15.2-1209.1 and 15.2-1812.2, and by adding in Chapter 2 of Title 48 sections numbered 48-16 and 48-17, and to repeal §§ 18.2-105, 18.2-138.1, 18.2-287, 18.2-287.1, 18.2-340.32, 18.2-389, 18.2-432 and 18.2-433 of the Code of Virginia, relating to relocating certain statutes currently in Title 18.2.

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

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-926, 16.1-278.8, 18.2-46.1, 18.2-258, 18.2-308 and 29.1-338 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 8.01-27.3, 8.01-226.8, 8.01-226.9, 15.2-912.2, 15.2-912.3, 15.2-915.2 and 15.2-915.3, by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered 15.2-926.2, by adding sections numbered 15.2-1209.1 and 15.2-1812.2, and by adding in Chapter 2 of Title 48 sections numbered 48-16 and 48-17 as follows:

§ 8.01-27.3. Evidence in actions regarding issuance of bad check.

In any civil action growing out of an arrest under § 18.2-181 or § 18.2-182, no evidence of statements or representations as to the status of the check, draft, order or deposit involved, or of any collateral agreement with reference to the check, draft, or order, shall be admissible unless such statement, or representation, or collateral agreement, is written upon the instrument at the time it is given by the drawer.

§ 8.01-226.8. Civil immunity for causing the arrest of a person for a bad check.

If payment of any check, draft, or order for the payment of money is refused by the financial institution, trust company or other depository upon which such instrument is drawn, and the person who drew or uttered such instrument is arrested or prosecuted under the provisions of § 18.2-181 or § 18.2-182, for failure or refusal to pay such instrument, the one who arrested or caused such person to be arrested and prosecuted, or either, shall be conclusively deemed to have acted with reasonable or probable cause in any suit for damages that may be brought by the person who drew or uttered such instrument, if the one who arrested or caused such person to be arrested and prosecuted, or either, shall have, before doing so, presented or caused such instrument to be presented to the depository on which it was drawn where it was refused, and then waited five days after notice, as provided in § 18.2-183, without the amount due under the provisions of such instrument being paid.

§ 8.01-226.9. Exemption from civil liability in connection with arrest or detention of person suspected of shoplifting.

A merchant, agent or employee of the merchant, who causes the arrest or detention of any person pursuant to the provisions of §§ 18.2-95, 18.2-96 or § 18.2-103, shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his agent or employee, provided that, in causing the arrest or detention of such person, the merchant, agent or employee of the merchant, had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located shall constitute probable cause for the detention of such person by such merchant, his agent or employee, provided such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an antishoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected

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58 area within such premises, of specially marked or tagged merchandise.

59 § 15.2-912.2. Regulation of bingo and instant bingo; proceeds exempt from local taxation.

60 A. Any locality may by ordinance consistent with Article 1.1:1 (§ 18.2-340.15) of Chapter 8 of Title
61 18.2 and the regulations of the Charitable Gaming Board (i) prohibit the playing of instant bingo and
62 (ii) establish reasonable hours during which bingo games may be played within such locality. If the
63 governing body of any town adopts an ordinance pursuant to the provisions of this section, such town
64 shall not be subject to any ordinance adopted by the county within which such town lies.

65 B. No locality may impose a gross receipts, entertainment, admission or any other tax based on
66 revenues of qualified organizations derived from the conduct of charitable gaming.

67 The definitions set forth in § 18.2-340.16 shall apply to this section.

68 § 15.2-912.3. Regulation of dance halls by counties, cities and towns.

69 For the purposes of this section, "public dance hall" means any place open to the general public
70 where dancing is permitted; however, a restaurant located in any city licensed under § 4.1-210 to serve
71 food and beverages having a dance floor with an area not exceeding 10 percent of the total floor area
72 of the establishment shall not be considered a public dance hall.

73 Any locality may by ordinance regulate public dance halls in such locality, and prescribe punishment
74 for violation of such ordinance not to exceed that prescribed for a Class 3 misdemeanor.

75 Such ordinance shall prescribe for: (i) the issuance of permits to operate public dance halls, grounds
76 for revocation and procedure for revocation of such permits; (ii) a license tax not to exceed \$600 on
77 every person operating or conducting any such dance hall; and (iii) rules and regulations for the
78 operation of such dance halls. Such ordinances may exempt from their operation dances held for
79 benevolent or charitable purposes and dances conducted under the auspices of religious, educational,
80 civic or military organizations.

81 No county ordinance adopted under the provisions of this section shall be in effect in any town in
82 which an ordinance adopted under the provisions of this section is in effect.

83 § 15.2-915.2. Regulation of transportation of a loaded rifle or shotgun.

84 The governing body of any county or city may by ordinance make it unlawful for any person to
85 transport, possess or carry a loaded shotgun or loaded rifle in any vehicle on any public street, road,
86 or highway within such locality. Any violation of such ordinance shall be punishable by a fine of not
87 more than \$100. Game wardens, sheriffs and all other law-enforcement officers shall enforce the
88 provisions of this section. No ordinance adopted pursuant to this section shall be enforceable unless the
89 governing body adopting such ordinance so notifies the Director of the Department of Game and Inland
90 Fisheries by registered mail prior to May 1 of the year in which such ordinance is to take effect.

91 The provisions of this section shall not apply to duly authorized law-enforcement officers or military
92 personnel in the performance of their lawful duties, nor to any person who reasonably believes that a
93 loaded rifle or shotgun is necessary for his personal safety in the course of his employment or business.

94 § 15.2-915.3. Requiring fingerprinting for concealed handgun permit.

95 Notwithstanding § 15.2-915, a county or city may by ordinance require any applicant for a
96 concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state
97 or national criminal history record.

98 § 15.2-926. Prohibiting loitering; frequenting amusements and curfew for minors; penalty.

99 A. Any locality may by ordinance prohibit loitering in, upon or around any public place, whether on
100 public or private property. Any locality may by ordinance also prohibit minors who are not attended by
101 their parents from frequenting or being in public places, whether on public or private property, at such
102 times, between 10:00 p.m. and 6:00 a.m., as the governing body deems proper.

103 A violation of such ordinances by a minor shall be disposed of as provided in §§ 16.1-278.4 and
104 16.1-278.5.

105 B. A locality may by ordinance regulate the frequenting, playing in or loitering in public places of
106 amusement by minors, and may prescribe punishment for violations of such ordinances not to exceed
107 that prescribed for a Class 3 misdemeanor.

108 § 15.2-926.2. Adoption of ordinances prohibiting obscenity.

109 The locality may adopt ordinances to prohibit obscenity or conduct paralleling the provisions of
110 Article 5 (§ 18.2-372 et seq.) and Article 6 (§ 18.2-390 et seq.) of Chapter 8 of Title 18.2 and
111 prohibiting the dissemination to juveniles of, and their access to, materials deemed harmful to juveniles
112 as defined in § 18.2-390 (6) in public at places frequented by juveniles or where juveniles are or may
113 be invited as part of the general public. Exceptions as provided in § 18.2-391.1 shall apply thereto. The
114 penalty for violating the provisions of such ordinance shall not be greater than the penalty imposed for
115 a Class 1 misdemeanor.

116 § 15.2-1209.1. Counties may regulate carrying of loaded firearms on public highways.

117 The governing body of any county is hereby empowered to adopt ordinances making it unlawful for
118 any person to carry or have in his possession while on any part of a public highway within such county
119 a loaded firearm when such person is not authorized to hunt on the private property on both sides of

the highway along which he is standing or walking; and to provide a penalty for violation of such ordinance not to exceed a fine of \$100. The provisions of this section shall not apply to persons carrying loaded firearms in moving vehicles, or to persons acting at the time in defense of persons or property.

§ 15.2-1812.2. Willful and malicious damage to or defacement of public or private facilities; penalty.

A. Any locality may by ordinance make unlawful the willful and malicious damage to or defacement of any public buildings, facilities and personal property or of any private buildings, facilities and personal property if the damage to the private property is less than \$1,000. The penalty for violation of such ordinance is a Class 1 misdemeanor.

B. Upon a finding of guilt under any such ordinance in any case tried before the court without a jury, in the event the violation constitutes a first offense that results in property damage or loss, the court, without entering a judgment of guilt, upon motion of the defendant, may defer further proceedings and place the defendant on probation pending completion of a plan of community service work. If the defendant fails or refuses to complete the community service as ordered by the court, the court may make final disposition of the case and proceed as otherwise provided. If the community service work is completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying the ordinance in subsequent proceedings.

C. The ordinance shall direct that the community service, to the extent feasible, include the repair, restoration or replacement of any damage or defacement to property within the locality, and may include clean-up, beautification, landscaping or other appropriate community service within the locality. Any ordinance adopted pursuant to this section shall make provision for a designee of the locality to supervise the performance of any community service work required and to report thereon to the court imposing such requirement. At or before the time of sentencing under the ordinance, the court shall receive and consider any plan for making restitution or performing community service submitted by the defendant. The court shall also receive and consider the recommendations of the supervisor of community service in the locality concerning the plan.

D. Notwithstanding any other provision of law, no person convicted of a violation of an ordinance adopted pursuant to this section shall be placed on probation or have his sentence suspended unless such person makes at least partial restitution for such property damage or is compelled to perform community services, or both, as is more particularly set forth in § 19.2-305.1.

§ 16.1-278.8. Delinquent juveniles.

A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278;
2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;

3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile and his parent;

4. Defer disposition for a period of time not to exceed twelve months, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the juvenile (i) has been found delinquent for an offense which would be a Class 1 misdemeanor or felony if committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department, and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;

5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a period not to exceed twelve months and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such

181 programs, cooperate in such treatment or be subject to such conditions and limitations as the court may
182 order and as are designed for the rehabilitation of the juvenile where the court determines this
183 participation to be in the best interest of the juvenile and other parties concerned and where the court
184 determines it reasonable to expect the parent to be able to comply with such order;

185 7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

186 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or
187 drugs in a program licensed by the Department of Mental Health, Mental Retardation and Substance
188 Abuse Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has
189 received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment
190 reasonably indicates that the commission of the offense was motivated by, or closely related to, the
191 habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition;
192 (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile
193 felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply
194 with the conditions of participation in the program, he shall be brought before the court for a hearing at
195 which the court may impose any other disposition authorized by this section. The court shall review
196 such placements at thirty-day intervals;

197 8. Impose a fine not to exceed \$500 upon such juvenile;

198 9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile
199 as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is
200 suspended may be referred for an assessment and subsequent referral to appropriate services, upon such
201 terms and conditions as the court may order. The court, in its discretion and upon a demonstration of
202 hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who
203 enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to
204 and from school. The restricted permit shall be issued in accordance with the provisions of such
205 subsection. However, only an abstract of the court order which identifies the juvenile and the conditions
206 under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

207 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the
208 physical custody of the court during any period of curfew restriction. The court shall send an abstract of
209 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall
210 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this
211 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement
212 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be
213 noted all curfew restrictions, shall be provided to the juvenile and shall contain such information
214 regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor
215 vehicle under the court order in accordance with its terms.

216 Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this
217 section shall be guilty of a violation of § 46.2-301.

218 The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a
219 driver's license until such time as is stipulated in the court order or until notification by the court of
220 withdrawal of the order imposing the curfew;

221 10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual
222 damages or loss caused by the offense for which the juvenile was found to be delinquent;

223 11. Require the juvenile to participate in a public service project under such conditions as the court
224 prescribes;

225 12. In case of traffic violations, impose only those penalties which are authorized to be imposed on
226 adults for such violations. However, for those violations punishable by confinement if committed by an
227 adult, confinement shall be imposed only as authorized by this title;

228 13. Transfer legal custody to any of the following:

229 a. A relative or other individual who, after study, is found by the court to be qualified to receive and
230 care for the juvenile;

231 b. A child welfare agency, private organization or facility which is licensed or otherwise authorized
232 by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a
233 delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the
234 approval of the Director; or

235 c. The local board of social services of the county or city in which the court has jurisdiction or, at
236 the discretion of the court, to the local board of the county or city in which the juvenile has residence if
237 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for
238 care and custody, provided that it has been given reasonable notice of the pendency of the case and an
239 opportunity to be heard. However, in an emergency in the county or city in which the court has
240 jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed
241 fourteen days without prior notice or an opportunity to be heard if the judge entering the placement
242 order describes the emergency and the need for such temporary placement in the order. Nothing in this

subdivision shall prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when such local board consents to the commitment. The board to which the juvenile is committed shall have the final authority to determine the appropriate placement for the juvenile. Any order authorizing removal from the home and transferring legal custody of a juvenile to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so state;

14. Commit the juvenile to the Department of Juvenile Justice, but only if he is eleven years of age or older and the current offense is (i) an offense which would be a felony if committed by an adult, (ii) an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense which would be a felony if committed by an adult, or (iii) an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated delinquent on three occasions for offenses which would be Class 1 misdemeanors if committed by an adult;

15. Impose the penalty authorized by § 16.1-284;

16. Impose the penalty authorized by § 16.1-284.1;

17. Impose the penalty authorized by § 16.1-285.1;

18. Impose the penalty authorized by § 16.1-278.9; or

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, or any violation of a local ordinance adopted pursuant to § ~~18.2-138.1~~ 15.2-1812.2.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147; or for any violation of a local ordinance adopted pursuant to § ~~18.2-138.1~~ 15.2-1812.2. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

§ 18.2-46.1. Definitions.

As used in this article unless the context requires otherwise or it is otherwise provided:

"Act of violence" means those felony offenses described in subsection A of § 19.2-297.1.

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more predicate criminal acts, (ii) which has an identifiable name or identifying sign or symbol, and (iii) whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

"Pattern of criminal gang activity" means commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such predicate criminal acts (i) were not part of a common act, transaction or scheme or (ii) were committed by two or more persons who are members of, or belong to, the same criminal street gang.

"Predicate criminal act" means an act of violence, any violation of §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, or any violation of a local ordinance adopted pursuant to § ~~18.2-138.1~~ 15.2-1812.2.

§ 18.2-258. Certain premises deemed common nuisance; penalty.

A. Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse, dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, which with the knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant thereof, is frequented by persons under the influence of illegally obtained controlled substances or marijuana, as defined in § 54.1-3401, or for the purpose of illegally obtaining possession of, manufacturing or distributing controlled substances or marijuana, or is used for the illegal possession, manufacture or distribution of controlled substances or marijuana, shall be deemed a common nuisance. Any such owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant who knowingly permits, establishes, keeps or maintains such a common nuisance is guilty of a Class 1 misdemeanor and, for a second or subsequent offense, a Class 6 felony. ~~In addition, after due notice and opportunity to be heard on the part of any owner, lessor, or a lienholder not involved in the original offense, by a proceeding similar to that in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and upon proof of guilty knowledge, a court may order that such house, motor vehicle, aircraft, boat, vessel, or~~

other premises, or any room or part thereof, be closed, but the court may, upon the owner or lessor giving bond in the penalty of not less than \$500 and with security to be approved by the court, conditioned that the premises shall not be used for unlawful purposes, turn the same over to its owner or lessor; or proceeding may be had in equity as provided in § 18.2-258.01.

B. The penalties provided in this section shall be in addition to any other penalty provided by law, including immediate termination of a rental agreement as provided in § 55-248.31.

C. In no civil or in rem proceeding under the provisions of this section shall judgment be entered against the owner, lessor, or lienholder of property unless it is proved: (i) that he knew of the unlawful use of the property and (ii) that he had the right, because of such unlawful use, to enter and repossess the property.

§ 18.2-308. Personal protection; carrying concealed weapons; when lawful to carry.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he shall be guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. Any weapon used in the commission of a violation of this section shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the Division of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 18.2-310. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

Except as provided in subsection J1, this section shall not apply to:

1. Any person while in his own place of business;
 2. Any police officers, including Capitol Police officers, sergeants, sheriffs, deputy sheriffs or regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1;
 3. Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
 4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
 5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
 6. Campus police officers appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;
 7. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions; and
 8. Any State Police officer retired from the Department of State Police, any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth and any special agent retired from the State Corporation Commission or the Alcoholic Beverage Control Board (i) with a service-related disability or (ii) following at least fifteen years of service with any such law-enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section.
- For purposes of applying the reciprocity provisions of subsection P, any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

C. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;
2. Officers or guards of any state correctional institution;
3. [Repealed.]
4. Conservators of the peace, except that the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in subsection D hereof: (a) notaries public; (b) registrars; (c) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (d) commissioners in chancery;
5. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29;
6. Law-enforcement agents of the Armed Forces of the United States and federal agents who are otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;
7. Law-enforcement agents of the United States Naval Criminal Investigative Service; and
8. Harbormaster of the City of Hopewell.

D. Any person twenty-one years of age or older may apply in writing to the clerk of the circuit court of the county or city in which he resides, or if he is a member of the United States armed forces, the county or city in which he is domiciled, for a five-year permit to carry a concealed handgun. ~~Notwithstanding § 15.2-915, a county or city may enact an ordinance that requires any applicant for a concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state or national criminal history record.~~ The application shall be made under oath before a notary or other person qualified to take oaths and shall be made only on a form prescribed by the Department of State Police, in consultation with the Supreme Court, requiring only that information necessary to determine eligibility for the permit. The court shall consult with either the sheriff or police department of the county or city and receive a report from the Central Criminal Records Exchange. As a condition for issuance of a concealed handgun permit, the applicant shall submit to fingerprinting if required by local ordinance in the county or city where the applicant resides and provide personal descriptive information to be forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant, and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies. Where feasible and practical, the local law-enforcement agency may transfer information electronically to the State Police instead of inked fingerprint cards. Upon completion of the criminal history records check, the State Police shall return the fingerprint cards to the submitting local agency or, in the case of scanned fingerprints, destroy the electronic record. The local agency shall then promptly notify the person that he has twenty-one days from the date of the notice to request return of the fingerprint cards, if any. All fingerprint cards not claimed by the applicant within twenty-one days of notification by the local agency shall be destroyed. All optically scanned fingerprints shall be destroyed upon completion of the criminal history records check without requiring that the applicant be notified. Fingerprints taken for the purposes described in this section shall not be copied, held or used for any other purposes. The court shall issue the permit within forty-five days of receipt of the completed application unless it is determined that the applicant is disqualified. An application is deemed complete when all information required to be furnished by the applicant is delivered to and received by the clerk of court before or concomitant with the conduct of a state or national criminal history records check. If the applicant is later found by the court to be disqualified, the permit shall be revoked.

E. The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or § 18.2-308.1:3 or the substantially similar law of any other state or of the United States.
2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.
3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to former § 37.1-134.1 or § 37.1-134.16 less than five years before the date of his application for a concealed handgun permit.
4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.
5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing or transporting a firearm.
6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

427 7. An individual who has been convicted of two or more misdemeanors within the five-year period
428 immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the
429 judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1.
430 Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.

431 8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana or any
432 controlled substance.

433 9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local
434 ordinance or of public drunkenness within the three-year period immediately preceding the application,
435 or who is a habitual drunkard as determined pursuant to § 4.1-333.

436 10. An alien other than an alien lawfully admitted for permanent residence in the United States.

437 11. An individual who has been discharged from the Armed Forces of the United States under
438 dishonorable conditions.

439 12. An individual who is a fugitive from justice.

440 13. An individual who it is alleged, in a sworn written statement submitted to the court by the
441 sheriff, chief of police or attorney for the Commonwealth in the opinion of such sheriff, chief of police
442 or attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to endanger
443 others. The statement of the sheriff, chief of police or the attorney for the Commonwealth shall be based
444 upon personal knowledge or upon the sworn written statement of a competent person having personal
445 knowledge.

446 14. An individual who has been convicted of any assault, assault and battery, sexual battery,
447 discharging of a firearm in violation of § 18.2-280 or § 18.2-286.1 or brandishing of a firearm in
448 violation of § 18.2-282 within the three-year period immediately preceding the application.

449 15. An individual who has been convicted of stalking.

450 16. An individual whose previous convictions or adjudications of delinquency were based on an
451 offense which would have been at the time of conviction a felony if committed by an adult under the
452 laws of any state, the District of Columbia, the United States or its territories. For purposes of this
453 disqualifier, only convictions occurring within sixteen years following the later of the date of (i) the
454 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
455 adjudication shall be deemed to be "previous convictions."

456 17. An individual who has a felony charge pending or a charge pending for an offense listed in
457 subdivision 14 or 15.

458 18. An individual who has received mental health treatment or substance abuse treatment in a
459 residential setting within five years prior to the date of his application for a concealed handgun permit.

460 19. An individual not otherwise ineligible pursuant to this section, who, within the three-year period
461 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
462 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or of a criminal offense of illegal possession
463 or distribution of marijuana or any controlled substance, under the laws of any state, the District of
464 Columbia, or the United States or its territories.

465 20. An individual, not otherwise ineligible pursuant to this section, with respect to whom, within the
466 three-year period immediately preceding the application, upon a charge of any criminal offense set forth
467 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or upon a charge of illegal possession or
468 distribution of marijuana or any controlled substance under the laws of any state, the District of
469 Columbia, or the United States or its territories, the trial court found that the facts of the case were
470 sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially
471 similar law of any other state, the District of Columbia, or the United States or its territories.

472 F. The making of a materially false statement in an application under this section shall constitute
473 perjury, punishable as provided in § 18.2-434.

474 G. The court may further require proof that the applicant has demonstrated competence with a
475 handgun and the applicant may demonstrate such competence by one of the following, but no applicant
476 shall be required to submit to any additional demonstration of competence:

477 1. Completing any hunter education or hunter safety course approved by the Department of Game
478 and Inland Fisheries or a similar agency of another state;

479 2. Completing any National Rifle Association firearms safety or training course;

480 3. Completing any firearms safety or training course or class available to the general public offered
481 by a law-enforcement agency, junior college, college, or private or public institution or organization or
482 firearms training school utilizing instructors certified by the National Rifle Association or the
483 Department of Criminal Justice Services;

484 4. Completing any law-enforcement firearms safety or training course or class offered for security
485 guards, investigators, special deputies, or any division or subdivision of law enforcement or security
486 enforcement;

487 5. Presenting evidence of equivalent experience with a firearm through participation in organized
488 shooting competition or current military service or proof of an honorable discharge from any branch of

the armed services;

6. Obtaining or previously having held a license to carry a firearm in this Commonwealth or a locality thereof, unless such license has been revoked for cause;

7. Completing any firearms training or safety course or class conducted by a state-certified or National Rifle Association-certified firearms instructor;

8. Completing any governmental police agency firearms training course and qualifying to carry a firearm in the course of normal police duties; or

9. Completing any other firearms training which the court deems adequate.

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this subsection.

H. The permit to carry a concealed handgun shall specify only the following information: name, address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee; the signature of the judge issuing the permit, or of the clerk of court who has been authorized to sign such permits by the issuing judge; the date of issuance; and the expiration date. The person issued the permit shall have such permit on his person at all times during which he is carrying a concealed handgun and must display the permit and a photo-identification issued by a government agency of the Commonwealth or by the United States Department of Defense or United States State Department (passport) upon demand by a law-enforcement officer.

I. Persons who previously have held a concealed handgun permit shall be issued, upon application as provided in subsection D, a new five-year permit unless there is good cause shown for refusing to reissue a permit. If the circuit court denies the permit, the specific reasons for the denial shall be stated in the order of the court denying the permit. Upon denial of the application, the clerk shall provide the person with notice, in writing, of his right to an ore tenus hearing. Upon request of the applicant made within twenty-one days, the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented by counsel, but counsel shall not be appointed, and the rules of evidence shall apply. The final order of the court shall include the court's findings of fact and conclusions of law.

J. Any person convicted of an offense that would disqualify that person from obtaining a permit under subsection E or who violates subsection F shall forfeit his permit for a concealed handgun and surrender it to the court. Upon receipt by the Central Criminal Records Exchange of a record of the arrest, conviction or occurrence of any other event which would disqualify a person from obtaining a concealed handgun permit under subsection E, the Central Criminal Records Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction or other event.

J1. Any person permitted to carry a concealed handgun, who is under the influence of alcohol or illegal drugs while carrying such handgun in a public place, shall be guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of § 18.2-36.1, maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. Upon such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

J2. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision E 14 or E 15, holding a permit for a concealed handgun, may have the permit suspended by the court before which such charge is pending or by the court which issued the permit.

J3. No person shall carry a concealed handgun onto the premises of any restaurant or club as defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia; however, nothing herein shall prohibit any sworn law-enforcement officer from carrying a concealed handgun on the premises of such restaurant or club or any owner or event sponsor or his employees from carrying a concealed handgun while on duty at such restaurant or club if such person has a concealed handgun permit.

J4. Any individual for whom it would be unlawful to purchase, possess or transport a firearm under § 18.2-308.1:2 or § 18.2-308.1:3, who holds a concealed handgun permit, may have the permit suspended by the court which issued the permit during the period of incompetency, incapacity or disability.

K. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a law-enforcement officer with the Department of State Police or with a sheriff or police department, bureau or force of any political subdivision of the

550 Commonwealth, after completing fifteen years of service or after reaching age fifty-five; (iii) as a
551 law-enforcement officer with the United States Federal Bureau of Investigation, Bureau of Alcohol,
552 Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, Immigration and
553 Naturalization Service, Customs Service, Department of State Diplomatic Security Service or Naval
554 Criminal Investigative Service, after completing fifteen years of service or after reaching age fifty-five;
555 (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the
556 District of Columbia or any of the territories of the United States, after completing fifteen years of
557 service; or (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii)
558 through (iv), after completing fifteen years of service. The clerk shall charge a fee of ten dollars for the
559 processing of an application or issuing of a permit, including his costs associated with the consultation
560 with law-enforcement agencies. The local law-enforcement agency conducting the background
561 investigation may charge a fee not to exceed thirty-five dollars to cover the cost of conducting an
562 investigation pursuant to this section. The thirty-five-dollar fee shall include any amount assessed by the
563 Federal Bureau of Investigation for providing criminal history record information, and the local
564 law-enforcement agency shall forward the amount assessed by the Federal Bureau of Investigation to the
565 State Police with the fingerprints taken from the applicant. The State Police may charge a fee not to
566 exceed five dollars to cover their costs associated with processing the application. The total amount
567 assessed for processing an application for a permit shall not exceed fifty dollars, with such fees to be
568 paid in one sum to the person who accepts the application. Payment may be made by any method
569 accepted by that court for payment of other fees or penalties. No payment shall be required until the
570 application is accepted by the court as a complete application. The order issuing such permit shall be
571 provided to the State Police and the law-enforcement agencies of the county or city. The State Police
572 shall enter the permittee's name and description in the Virginia Criminal Information Network so that
573 the permit's existence and current status will be made known to law-enforcement personnel accessing the
574 Network for investigative purposes.

575 L. Any person denied a permit to carry a concealed handgun under the provisions of this section
576 may present a petition for review to the Court of Appeals. The petition for review shall be filed within
577 sixty days of the expiration of the time for requesting an ore tenus hearing pursuant to subsection I, or
578 if an ore tenus hearing is requested, within sixty days of the entry of the final order of the circuit court
579 following the hearing. The petition shall be accompanied by a copy of the original papers filed in the
580 circuit court, including a copy of the order of the circuit court denying the permit. Subject to the
581 provisions of § 17.1-410 B, the decision of the Court of Appeals or judge shall be final. Notwithstanding
582 any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs
583 incurred by the person shall be paid by the Commonwealth.

584 M. For purposes of this section:

585 "Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed,
586 made and intended to fire a projectile by means of an explosion of a combustible material from one or
587 more barrels when held in one hand.

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

591 N. As used in this article:

592 "Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated
593 mechanism.

594 "Spring stick" means a spring-loaded metal stick activated by pushing a button which rapidly and
595 forcefully telescopes the weapon to several times its original length.

596 O. The granting of a concealed handgun permit shall not thereby authorize the possession of any
597 handgun or other weapon on property or in places where such possession is otherwise prohibited by law
598 or is prohibited by the owner of private property.

599 P. A valid concealed handgun permit or license issued by another state shall be valid in the
600 Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of
601 the validity of all such permits or licenses issued within that state, accessible twenty-four hours a day,
602 (ii) the requirements and qualifications of that state's law are adequate to prevent possession of a permit
603 by persons who would be denied a permit in the Commonwealth under this section. The Superintendent
604 of State Police shall (a) in consultation with the Office of the Attorney General determine whether states
605 meet the requirements and qualifications of this section, (b) maintain a registry of such states on the
606 Virginia Criminal Information Network (VCIN), and (c) make the registry available to law-enforcement
607 officers for investigative purposes.

608 Q. A valid concealed handgun permit issued by the State of Maryland shall be valid in the
609 Commonwealth provided, (i) the holder of the permit is licensed in the State of Maryland to perform
610 duties substantially similar to those performed by Virginia branch pilots licensed pursuant to Chapter 9
611 (§ 54.1-900 et seq.) of Title 54.1 and is performing such duties while in the Commonwealth, and (ii) the

holder of the permit is 21 years of age or older.

R. The provisions of this statute or the application thereof to any person or circumstances which are held invalid shall not affect the validity of other provisions or applications of this statute which can be given effect without the invalid provisions or applications. This subsection is to reiterate § 1-17.1 and is not meant to add to or delete from that provision.

§ 29.1-338. Revocation of license; penalties.

If any person is found guilty of violating (i) any of the provisions of the hunting, trapping, or inland fish laws, any provisions of §§ 15.2-915.2, 15.2-1209.1, 18.2-131 through 18.2-135 and §§ 18.2-285 through ~~18.2-287.1~~ 18.2-286.1, or any regulations adopted by the Board pursuant thereto, a second time within three years of a previous conviction of violating any such law or regulation, or (ii) any provisions of law or ordinance governing the dumping of refuse, trash or other litter, while engaged in hunting, trapping or fishing, the license issued to such person shall be revoked by the court trying the case and that person shall not apply for a new license until twelve months succeeding the date of conviction. The court may also prohibit the convicted person from obtaining any license to hunt, fish, or trap in the Commonwealth for a period of one year to five years. If found hunting, trapping or fishing during this prohibited period, the person shall be guilty of a Class 2 misdemeanor. Licenses revoked shall be sent to the Director.

§ 48-16. Closure of nuisance involving illegal drug transactions.

Upon a conviction under § 18.2-258 and after due notice and opportunity to be heard on the part of any owner, lessor, or a lienholder not involved in the original offense, by a proceeding similar to that in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and upon proof of guilty knowledge, a court may order that such house, motor vehicle, aircraft, boat, vessel, or other premises, or any room or part thereof, be closed, but the court may, upon the owner or lessor giving bond in the penalty of not less than \$500 and with security to be approved by the court, conditioned that the premises shall not be used for unlawful purposes, turn the same over to its owner or lessor; or proceeding may be had in equity as provided in § 48-17.

B. The penalties provided in this section shall be in addition to any other penalty provided by law, including immediate termination of a rental agreement as provided in § 55-248.31.

C. In a civil or in rem proceeding under the provisions of this section judgment shall not be entered against the owner, lessor, or lienholder of property unless it is proved (i) that he knew of the unlawful use of the property and (ii) that he had the right, because of such unlawful use, to enter and repossess the property.

§ 48-17. Enjoining nuisances involving illegal drug transactions.

The attorney for the Commonwealth, or any citizen of the county, city, or town, where such a nuisance as is described in § 18.2-258 exists, may, in addition to any other remedies and punishment, maintain a suit in equity in the name of the Commonwealth to enjoin the same. The attorney for the Commonwealth shall not be required to prosecute any suit brought by a citizen under this section. In every case where the bill charges, on the knowledge or belief of the complainant, and is sworn to by two witnesses, that a nuisance exists as described in § 18.2-258, a temporary injunction may be granted as soon as the bill is presented to the court provided reasonable notice has been given. The injunction shall enjoin and restrain any owners, tenants, their agents, employees, and any other person from contributing to or maintaining the nuisance and may impose such other requirements as the court deems appropriate. If, after a hearing, the court finds that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it shall continue the injunction against such persons or premises for such period of time as it deems appropriate, with the right to dissolve the injunction upon a proper showing by the owner of the premises.

2. That §§ 18.2-105, 18.2-138.1, 18.2-287, 18.2-287.1, 18.2-340.32, 18.2-389, 18.2-432 and 18.2-433 of the Code of Virginia are repealed.