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**HOUSE BILL NO. 585**

Offered January 11, 2006

Prefiled January 10, 2006

*A BILL to amend and reenact §§ 9.1-902, 16.1-272, 17.1-805, 18.2-62, 18.2-67.5:2, 18.2-67.8, 18.2-370, 18.2-370.2, 19.2-268.2, 19.2-299, 32.1-126.01, 32.1-162.9:1, 37.2-314, 63.2-1719, 63.2-1726, and 63.2-1727 of the Code of Virginia, and to repeal § 18.2-370.1 of the Code of Virginia, relating to sexual offenses against children.*

Patron—Watts

Referred to Committee for Courts of Justice

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

**1. That §§ 9.1-902, 16.1-272, 17.1-805, 18.2-62, 18.2-67.5:2, 18.2-67.8, 18.2-370, 18.2-370.2, 19.2-268.2, 19.2-299, 32.1-126.01, 32.1-162.9:1, 37.2-314, 63.2-1719, 63.2-1726, and 63.2-1727 of the Code of Virginia are amended and reenacted 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, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape, § 18.2-374.1 or subsection D of § 18.2-374.1:1; or a third or subsequent conviction of (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, 18.2-366, or clause (iv) of subsection B of § 18.2-374.3;

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

4. A "sexually violent offense"; or

5. Murder pursuant to § 18.2-31 or 18.2-32 where the victim is a minor.

"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, § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of § 18.2-67.5, or § 18.2-370, ~~or 18.2-370.1~~; or

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

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 and any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the political subdivision where the offender was convicted.

C. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent of any offense enumerated in subdivisions A 1 through A 4 on or after July 1, 2005, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration. In making its determination, the court shall consider all of the following factors that are relevant to the case: (i) the degree to which the delinquent act was committed with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case.

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

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge other than capital murder,

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59 the court shall fix the sentence without the intervention of a jury.

60 1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes  
61 the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender  
62 under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii)  
63 the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of  
64 the sentence to be served in the same manner as provided for adults be suspended conditioned upon  
65 successful completion of such terms and conditions as may be imposed in a juvenile court upon  
66 disposition of a delinquency case including, but not limited to, commitment under subdivision 14 of  
67 § 16.1-278.8 or § 16.1-285.1.

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

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

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

80 C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under  
81 the criminal law, in cases where the juvenile is convicted of a felony in violation of § 18.2-61, 18.2-63,  
82 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, or 18.2-370 ~~or 18.2-370.1~~ or, where the victim is a  
83 minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of  
84 § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the  
85 Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ 9.1-900 et seq.)  
86 of Title 9.1.

87 D. If the court sentences the juvenile as a juvenile under this chapter, the clerk shall provide a copy  
88 of the court's final order or judgment to the court service unit in the same locality as the juvenile court  
89 to which the case had been transferred.

90 § 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

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

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

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

118 3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving or  
119 distributing, or possessing with the intent to manufacture, sell, give or distribute a Schedule I or II  
120 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 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 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 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 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 solicitation to commit murder under § 18.2-29; 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, 18.2-41, 18.2-46.5, 18.2-46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation of § 18.2-48, 18.2-48.1 or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or 18.2-55; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or 18.2-58.1; any felony violation of § 18.2-60.1 or 18.2-60.3; any violation of § 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, former § 18.2-67.2.1, 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 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 former § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of § 18.2-368, or 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 or hepatitis B or C viruses.

A. As soon as practicable following arrest, the attorney for the Commonwealth may request, after consultation with any victim, that any person charged with (i) any crime involving sexual assault pursuant to this article, (ii) any offenses against children as prohibited by §§ 18.2-361, 18.2-366, and 18.2-370, and 18.2-370.1, or (iii) any assault and battery in which the victim was exposed to body fluids of the person arrested, be requested to submit to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. The person so charged shall be counseled about the meaning of the test, about acquired immunodeficiency syndrome or hepatitis B or C viruses, and about the transmission and prevention of infection with human immunodeficiency virus or hepatitis B or C viruses.

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

B. Upon conviction, or adjudication as delinquent in the case of a juvenile, of any crime involving sexual assault pursuant to this article or any offenses against children as prohibited by §§ 18.2-361, 18.2-366, and 18.2-370, and 18.2-370.1, the attorney for the Commonwealth may, after consultation with any victim and, upon the request of any victim shall, request and the court shall order the defendant to

182 submit to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Any test  
183 conducted following conviction shall be in addition to such tests as may have been conducted following  
184 arrest pursuant to subsection A.

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

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

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

193 § 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.

194 A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the  
195 offenses specified in subsection B of this section and one of the offenses specified in subsection B of  
196 § 18.2-67.5:3 when such offenses were not part of a common act, transaction or scheme, and who has  
197 been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or  
198 subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and  
199 shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury  
200 or judge before whom the person is tried, that he has been previously convicted of at least one of the  
201 specified offenses.

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

203 1. Carnal knowledge of a child between thirteen and fifteen years of age in violation of § 18.2-63  
204 when the offense is committed by a person over the age of eighteen;

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

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

207 4. Crimes against nature in violation of subsection B of § 18.2-361;

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

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

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

211 C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under  
212 the laws of any state or the United States that are substantially similar to those listed in subsection B  
213 and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile  
214 offense is substantially similar to those listed in subsection B, the offense would be a felony if  
215 committed by an adult in the Commonwealth and the offense was committed less than twenty years  
216 before the second offense.

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

219 § 18.2-67.8. Closed preliminary hearings.

220 In preliminary hearings for offenses charged under this article or under §§ 18.2-361, 18.2-366, *or*  
221 ~~18.2-370 or § 18.2-370.1~~, the court may, on its own motion or at the request of the Commonwealth, the  
222 complaining witness, the accused, or their counsel, exclude from the courtroom all persons except  
223 officers of the court and persons whose presence, in the judgment of the court, would be supportive of  
224 the complaining witness or the accused and would not impair the conduct of a fair hearing.

225 § 18.2-370. Taking indecent liberties with children; penalties.

226 A. Any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally  
227 commits any of the following acts with any child under the age of 15 years is guilty of a Class 5  
228 felony:

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

231 (2) [Repealed.]

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

234 (4) Propose to such child the performance of an act of sexual intercourse or any act constituting an  
235 offense under § 18.2-361; ~~or~~

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

238 (6) *Sexually abuse such child; or*

239 (7) *Propose that any such child engage in sexual intercourse or sodomy or the fondling of sexual or*  
240 *genital parts with another.*

241 B. Any person 18 years of age or over who, with lascivious intent, knowingly and intentionally  
242 receives money, property, or any other remuneration for allowing, encouraging, or enticing any person  
243 under the age of 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 guilty of a Class 5 felony.

C. Any person who is convicted of a second or subsequent violation of ~~this section shall be subsection A or B or clause (i) of subsection D~~ is guilty of a Class 4 felony, ~~and of subsection F is guilty of a Class 3 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.

D. Any parent, step-parent, grandparent or step-grandparent who commits a violation of ~~either this section or clause (v) or (vi) of subsection A of § 18.2-370.1~~ (i) upon his child, step-child, grandchild or step-grandchild who is at least 15 but less than 18 years of age is guilty of a Class 5 felony or (ii) upon his child, step-child, grandchild or step-grandchild less than 15 years of age is guilty of a Class 4 felony.

E. Any person 18 years of age or older who maintains a custodial or supervisory relationship over a child under the age of 18 and is not legally married to such child and such child is not emancipated who, with lascivious intent, knowingly and intentionally commits a violation of subsection A upon a child who is at least 15 but less than 18 years of age, is guilty of a Class 6 felony.

F. If the person commits a violation of subsection A when the child victim is under the age of 13, he is guilty of a Class 4 felony.

§ 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, 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 4 (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.

§ 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, 18.2-366, ~~or 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.

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

A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall; or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty; or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, ~~18.2-370.1~~, or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, any information regarding the accused's participation or membership in a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been provided with a copy of the presentence report by his counsel or advised of its contents and be given the right to cross-examine the investigating officer as to any matter

305 contained therein and to present any additional facts bearing upon the matter. The report of the  
306 investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part  
307 of the record in the case. Any report so filed shall be made available only by court order and shall be  
308 sealed upon final order by the court, except that such reports or copies thereof shall be available at any  
309 time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United  
310 States; to any agency where the accused is referred for treatment by the court or by probation and  
311 parole services; and to counsel for any person who has been indicted jointly for the same felony as the  
312 person subject to the report. Any report prepared pursuant to the provisions hereof shall without court  
313 order be made available to counsel for the person who is the subject of the report if that person is  
314 charged with a felony subsequent to the time of the preparation of the report. The presentence report  
315 shall be in a form prescribed by the Department of Corrections. In all cases where such report is not  
316 ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.  
317 For the purposes of this subsection, information regarding the accused's participation or membership in a  
318 criminal street gang may include the characteristics, specific rivalries, common practices, social customs  
319 and behavior, terminology, and types of crimes that are likely to be committed by that criminal street  
320 gang.

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

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

332 D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense  
333 for which the defendant was convicted was a felony, not a capital offense, committed on or after  
334 January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to  
335 § 18.2-251.01.

336 § 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited;  
337 criminal records check required; suspension or revocation of license.

338 A. A licensed nursing home shall not hire for compensated employment, persons who have been  
339 convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title  
340 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of  
341 § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set  
342 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  
343 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  
344 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,  
345 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  
346 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  
347 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  
348 subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children  
349 as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out  
350 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  
351 medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in  
352 § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of  
353 pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in  
354 § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5  
355 (§ 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  
356 set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in  
357 § 53.1-203, or an equivalent offense in another state. However, a licensed nursing home may hire an  
358 applicant who has been convicted of one misdemeanor specified in this section not involving abuse or  
359 neglect or moral turpitude, provided five years have elapsed following the conviction.

360 Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn  
361 statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether  
362 within or without the Commonwealth. Any person making a materially false statement when providing  
363 such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a  
364 Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is  
365 prohibited other than to a federal or state authority or court as may be required to comply with an  
366 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, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 ~~18.2-370.1~~, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.

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

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

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

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

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

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

431 § 37.2-314. Background check required.

432 A. As a condition of employment, the Department shall require any individual who (i) accepts a  
433 position of employment at a state facility and was not employed by that state facility prior to July 1,  
434 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the  
435 Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to  
436 fingerprinting and provide personal descriptive information to be forwarded along with the applicant's  
437 fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)  
438 for the purpose of obtaining national criminal history record information regarding the individual.

439 B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated  
440 employment persons who have been (i) convicted of murder or manslaughter, as set out in Article 1  
441 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob, as set out in § 18.2-41;  
442 abduction, as set out in subsection A of § 18.2-47; abduction for immoral purposes, as set out in  
443 § 18.2-48; assault and bodily wounding, as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title  
444 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  
445 § 18.2-59; threat, as set out in § 18.2-60; any felony stalking violation, as set out in § 18.2-60.3; sexual  
446 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  
447 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  
448 Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs, as set out in Article 1  
449 (§ 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  
450 machine gun in a crime of violence, as set out in § 18.2-289; aggressive use of a machine gun, as set  
451 out in § 18.2-290; use of a sawed-off shotgun in a crime of violence, as set out in subsection A of  
452 § 18.2-300; pandering, as set out in § 18.2-355; crimes against nature involving children, as set out in  
453 § 18.2-361; taking indecent liberties with children, as set out in § 18.2-370 ~~or 18.2-370.1~~; abuse or  
454 neglect of children, as set out in § 18.2-371.1, including failing to secure medical attention for an  
455 injured child, as set out in § 18.2-314; obscenity offenses, as set out in § 18.2-374.1; possession of child  
456 pornography, as set out in § 18.2-374.1.1; electronic facilitation of pornography, as set out in  
457 § 18.2-374.3; incest, as set out in § 18.2-366; abuse or neglect of incapacitated adults, as set out in  
458 § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5  
459 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners,  
460 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  
461 § 53.1-203; or an equivalent offense in another state; (ii) convicted of any felony violation relating to  
462 possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, in the five  
463 years prior to the application date for employment; or (iii) convicted of any felony violation relating to  
464 possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, and continue  
465 on probation or parole or have failed to pay required court costs.

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

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

476 E. The Board may adopt regulations to comply with the provisions of this section. Copies of any  
477 information received by the state facility or Department pursuant to this section shall be available to the  
478 Department and to the applicable state facility but shall not be disseminated further, except as permitted  
479 by state or federal law. The cost of obtaining the criminal history record and the central registry  
480 information shall be borne by the applicant, unless the Department or state facility decides to pay the  
481 cost.

482 § 63.2-1719. Definitions.

483 As used in this subtitle:

484 "Barrier crime" means a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et  
485 seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set  
486 out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and  
487 bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set  
488 out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in  
489 § 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, 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, 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

551 medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in  
552 § 18.2-374.1, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting  
553 a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of  
554 Title 18.2, as set out in § 18.2-379, or an equivalent offense in another state. If the applicant is denied  
555 employment, or the opportunity to volunteer or provide services at a children's residential facility  
556 because of information appearing on his criminal history record, and the applicant disputes the  
557 information upon which the denial was based, upon written request of the applicant the state agency  
558 shall furnish the applicant the procedures for obtaining his criminal history record from the Federal  
559 Bureau of Investigation. If the applicant has been permitted to provide services pending receipt of the  
560 report, the children's residential facility is not precluded from suspending the applicant from his position  
561 or denying the applicant unsupervised access to clients pending a final determination of the applicant's  
562 fitness to have responsibility for the safety and well-being of children. The information provided to the  
563 children's residential facility shall not be disseminated except as provided in this section.

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

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

581 § 63.2-1727. Sex offender or child abuser prohibited from operating or residing in family day home.

582 It shall be unlawful for any person to operate a family day home if he, or if he knows that any other  
583 person who resides in the home, has been convicted of a felony in violation of §§ 18.2-48, 18.2-61,  
584 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, 18.2-366, 18.2-369,  
585 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  
586 or neglect within or outside the Commonwealth. A violation of this section shall be punishable as a  
587 Class 1 misdemeanor.

588 **2. That § 18.2-370.1 of the Code of Virginia is repealed.**

589 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**  
590 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**  
591 **\$949,946 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of**  
592 **commitment to the custody of the Department of Juvenile Justice.**