

078183544

HOUSE BILL NO. 2279

Offered January 10, 2007

Prefiled January 9, 2007

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, 19.2-303, 32.1-126.01, as it is currently effective and as it shall become effective, 32.1-162.9:1, as it is currently effective and as it shall become effective, 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 classification of 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, 19.2-303, 32.1-126.01, as it is currently effective and as it shall become effective, 32.1-162.9:1, as it is currently effective and as it shall become effective, 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;

If the offense was committed on or after July 1, 2006, (i) a violation or attempted violation of § 18.2-91 with the intent to commit any felony offense listed in this section; (ii) a violation or attempted violation of subsection A of § 18.2-374.1:1; or (iii) a felony violation under § 18.2-67.5:1.

2. Clause (iv) of subsection B of § 18.2-374.3 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, clause (i) or (iii) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, or 18.2-366;

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

4. A "sexually violent offense";

5. "Murder"; or

6. Criminal homicide in conjunction with a violation of clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident.

"Murder" means a violation of § 18.2-31 or 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

"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; or

3. If the offense was committed on or after July 1, 2006, a violation or attempted violation of § 18.2-91 with the intent to commit any felony offense listed in this section. 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 the 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 (i) any foreign country or any political subdivision thereof, (ii) 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 jurisdiction where the

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59 offender was convicted.

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

71 § 16.1-272. Power of circuit court over juvenile offender.

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

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

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

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

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

96 C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under
97 the criminal law, in cases where the juvenile is convicted of a felony in violation of § 18.2-61, 18.2-63,
98 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
99 minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of
100 § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the
101 Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ 9.1-900 et seq.)
102 of Title 9.1.

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

106 § 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

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

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

offense punishable by a maximum punishment of 40 years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be imprisonment for life;

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

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

182 of the person arrested, be requested to submit to testing for infection with human immunodeficiency
 183 virus or hepatitis B or C viruses. The person so charged shall be counseled about the meaning of the
 184 test, about acquired immunodeficiency syndrome or hepatitis B or C viruses, and about the transmission
 185 and prevention of infection with human immunodeficiency virus or hepatitis B or C viruses.

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

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

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

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

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

209 § 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.

210 A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the
 211 offenses specified in subsection B of this section and one of the offenses specified in subsection B of
 212 § 18.2-67.5:3 when such offenses were not part of a common act, transaction or scheme, and who has
 213 been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or
 214 subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and
 215 shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury
 216 or judge before whom the person is tried, that he has been previously convicted of at least one of the
 217 specified offenses.

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

219 1. Carnal knowledge of a child between ~~thirteen~~ 13 and ~~fifteen~~ 15 years of age in violation of
 220 § 18.2-63 when the offense is committed by a person over the age of ~~eighteen~~ 18;

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

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

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

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

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

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

227 C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under
 228 the laws of any state or the United States that are substantially similar to those listed in subsection B
 229 and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile
 230 offense is substantially similar to those listed in subsection B, the offense would be a felony if
 231 committed by an adult in the Commonwealth and the offense was committed less than ~~twenty~~ 20 years
 232 before the second offense.

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

235 § 18.2-67.8. Closed preliminary hearings.

236 In preliminary hearings for offenses charged under this article or under §§ 18.2-361, 18.2-366, or
 237 18.2-370 ~~or § 18.2-370.1~~, the court may, on its own motion or at the request of the Commonwealth, the
 238 complaining witness, the accused, or their counsel, exclude from the courtroom all persons except
 239 officers of the court and persons whose presence, in the judgment of the court, would be supportive of
 240 the complaining witness or the accused and would not impair the conduct of a fair hearing.

241 § 18.2-370. Taking indecent liberties with children; penalties.

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

244 *taking indecent liberties with a child:*

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

248 (2) [Repealed.]

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

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

253 (5) *Commit sexual abuse of the child as defined in subdivision 6 of § 18.2-67.10; or*

254 (6) *Receive money, property, or any other remuneration for allowing, encouraging, or enticing such*
255 *child to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or*
256 *knowingly encourage such child to perform in or be a subject of sexually explicit material; or*

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

259 B. Any person 18 years of age or over who, with lascivious intent, knowingly and intentionally
260 receives money, property, or any other remuneration for allowing, encouraging, or enticing any person
261 under the age of 18 years to perform in or be a subject of sexually explicit visual material as defined in
262 ~~§ 18.2-374.1~~ or who knowingly encourages such person to perform in or be a subject of sexually
263 explicit material; shall be guilty of a Class 5 felony. *who commits a violation of subsection A, (i) when*
264 *the victim was less than 13 or (ii) who is the parent, step-parent, grandparent, or step-grandparent of a*
265 *victim who was less than 18 at the time of the violation is guilty of a felony punishable by confinement*
266 *in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of*
267 *not more than \$100,000.*

268 C. Any person, not included under clause (ii) of subsection B, who (i) commits a violation of
269 subsection A (1) through A (5) or subsection A (7) when the victim was at least 13 but less than 15 or
270 (ii) commits a violation of subsection A (6) when the victim is under 18 is guilty of a Class 5 felony.

271 D. Any person, not included under clause (ii) of subsection B, who commits a violation of subsection
272 A when the victim was at least 15 but less than 18 and who maintained a custodial or supervisory
273 relationship over such child and who was not legally married to such child and such child was not
274 emancipated at the time of the violation shall be guilty of a Class 6 felony.

275 E. Any person who is convicted of a second or subsequent violation of this section shall be of
276 subsection B is guilty of a Class 3 felony; of subsection C is guilty of a Class 4 felony; and of
277 subsection D is guilty of a Class 5 felony; provided that (i) the offenses were not part of a common act,
278 transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction;
279 and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused
280 was previously convicted of a violation of this section.

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

286 § 18.2-370.2. Sex offenses prohibiting proximity to children; penalty.

287 A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation
288 of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, or
289 subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii)
290 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
291 § 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
292 § 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379. As of July 1, 2006, "offense prohibiting
293 proximity to children" shall include a violation of § 18.2-472.1, when the offense requiring registration
294 was one of the foregoing offenses.

295 B. Every adult who is convicted of an offense prohibiting proximity to children when the offense
296 occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering
297 within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or
298 high school. In addition, every adult who is convicted of an offense prohibiting proximity to children
299 when the offense occurred on or after July 1, 2006, shall as part of his sentence be forever prohibited
300 from loitering within 100 feet of the premises of any place he knows or has reason to know is a child
301 day program as defined in § 63.2-100.

302 A violation of this section is punishable as a Class 6 felony.

303 § 19.2-268.2. Recent complaint hearsay exception.

304 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. 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, unless waived by the court and the defendant and the attorney for the Commonwealth, 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, 18.2-48, clause (2) or (3) of 18.2-49, § 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, 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. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, and any applicable sentencing guideline worksheets. This expedited report shall be subject to all the same procedures as all other sentencing reports and sentencing guidelines worksheets. 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 contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection, information regarding the accused's participation or membership in a criminal street gang may include the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and types of crimes that are likely to be committed by that criminal street gang.

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

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

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense

for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The judge, after convicting the defendant of a felony, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, *or* 18.2-370, ~~or 18.2-370.1~~, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

§ 32.1-126.01. (Effective until July 1, 2007 - See note for contingent expiration) Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed nursing home shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 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

428 pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in
429 § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5
430 (§ 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
431 set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in
432 § 53.1-203, or an equivalent offense in another state. However, a licensed nursing home may hire an
433 applicant who has been convicted of one misdemeanor specified in this section not involving abuse or
434 neglect, if five years have elapsed following the conviction.

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

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

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

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

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

455 § 32.1-126.01. (Contingently effective July 1, 2007 - See notes) Employment for compensation of
456 persons convicted of certain offenses prohibited; criminal records check required; suspension or
457 revocation of license.

458 A. A licensed nursing home shall not hire for compensated employment, persons who have been
459 convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title
460 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of
461 § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set
462 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
463 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
464 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,
465 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
466 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
467 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
468 subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children
469 as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out
470 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
471 medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in
472 § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of
473 pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in
474 § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5
475 (§ 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
476 set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in
477 § 53.1-203, or an equivalent offense in another state. However, a licensed nursing home may hire an
478 applicant who has been convicted of one misdemeanor specified in this section not involving abuse or
479 neglect, if five years have elapsed following the conviction.

480 Any person desiring to work at a licensed nursing home, beginning on or after July 1, 2007, shall
481 provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or
482 any pending criminal charges, whether within or without the Commonwealth. Any person making a
483 materially false statement when providing such sworn statement or affirmation regarding any such
484 offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the
485 information provided pursuant to this section is prohibited other than to a federal or state authority or
486 court as may be required to comply with an express requirement of law for such further dissemination.

487 B. A nursing home shall, within 30 days of employment, obtain for any compensated employees an
488 original criminal record clearance with respect to convictions for offenses specified in this section. The
489 applicant shall submit to fingerprinting and 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 a national criminal history record information check regarding such applicant. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the nursing home that the applicant meets the criteria or does not meet the criteria for employment based on whether or not the applicant has ever been convicted of any offense set forth in subsection A or an equivalent offense in another state. The Central Criminal Records Exchange shall not disclose information to a nursing home regarding charges or convictions of any crimes. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Central Criminal Records Exchange or Federal Bureau of Investigation. The information provided to the nursing home shall not be disseminated except as provided in this section.

In addition to the fees assessed by the Federal Bureau of Investigation, the Department of State Police may assess a fee for responding to requests required by this section. The provisions of this section shall be enforced by the Commissioner.

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.

C. 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.

D. 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.

E. Any business or organization specified by this section that knowingly and willfully fails to conduct a background check as required herein shall be assessed a civil penalty of not more than \$500 by the Commissioner and is subject to the provisions set forth in § 32.1-135.

§ 32.1-162.9:1. (Effective until July 1, 2007 - See note for contingent expiration) 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 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.

However, a home care organization or hospice may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect, if 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

551 requirement of law for such further dissemination.

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

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

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

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

567 § 32.1-162.9:1. (Contingently effective July 1, 2007 - See notes) Employment for compensation of
568 persons convicted of certain offenses prohibited; criminal records check required; suspension or
569 revocation of license.

570 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization
571 exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined
572 in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of murder
573 or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious
574 wounding by a mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction
575 for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4
576 (§ 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
577 § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in
578 § 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
579 set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in
580 § 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
581 machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in
582 subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children
583 as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out
584 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
585 medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in
586 § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of
587 pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in
588 § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5
589 (§ 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
590 set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in
591 § 53.1-203, or an equivalent offense in another state.

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

594 Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any
595 home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any
596 licensed hospice as defined in § 32.1-162.1, beginning on or after July 1, 2007, shall provide the hiring
597 facility with a sworn statement or affirmation disclosing any criminal convictions or any pending
598 criminal charges, whether within or without the Commonwealth. Any person making a materially false
599 statement when providing such sworn statement or affirmation regarding any such offense shall be guilty
600 upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant
601 to this section is prohibited other than to a federal or state authority or court as may be required to
602 comply with an express requirement of law for such further dissemination.

603 B. Such home care organization or hospice shall, within 30 days of employment, obtain for any
604 compensated employees an original criminal record clearance with respect to convictions for offenses
605 specified in this section. The applicant shall submit to fingerprinting and provide personal descriptive
606 information to be forwarded along with the applicant's fingerprints through the Central Criminal Records
607 Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history
608 record information check regarding such applicant. The Central Criminal Records Exchange, upon
609 receipt of an applicant's record or notification that no record exists, shall make a report to the home care
610 organization or hospice that the applicant meets the criteria or does not meet the criteria for employment
611 based on whether or not the applicant has ever been convicted of any offense set forth in subsection A
612 or an equivalent offense in another state. The Central Criminal Records Exchange shall not disclose

information to a home care organization or hospice regarding charges or convictions of any crimes. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Central Criminal Records Exchange or Federal Bureau of Investigation. The information provided to the home care organization or hospice shall not be disseminated except as provided in this section.

In addition to the fees assessed by the Federal Bureau of Investigation, the Department of State Police may assess a fee for responding to requests required by this section. The provisions of this section shall be enforced by the Commissioner.

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.

C. 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.

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

E. Any business or organization specified by this section that knowingly and willfully fails to conduct a background check as required herein shall be assessed a civil penalty of not more than \$500 by the Commissioner and is subject to the provisions set forth in §§ 32.1-162.6 and 32.1-162.13.

§ 37.2-314. Background check required.

A. As a condition of employment, the Department shall require any individual who (i) accepts a position of employment at a state facility and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and 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 (FBI) for the purpose of obtaining national criminal history record information regarding the individual.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been (i) convicted of murder or manslaughter, as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob, as set out in § 18.2-41; abduction, as set out in subsection A of § 18.2-47; abduction for immoral purposes, as set out in § 18.2-48; assault and bodily wounding, as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery, as set out in § 18.2-58; carjacking, as set out § 18.2-58.1; extortion by threat, as set out in § 18.2-59; threat, as set out in § 18.2-60; any felony stalking violation, as set out in § 18.2-60.3; sexual assault, as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson, as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary, as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting, as set out in § 18.2-286.1; use of a machine gun in a crime of violence, as set out in § 18.2-289; 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; taking indecent liberties with children, as set out in § 18.2-370 or ~~18.2-370.1~~; abuse or neglect of children, as set out in § 18.2-371.1, including failing to secure medical attention for an injured child, as set out in § 18.2-314; obscenity offenses, as set out in § 18.2-374.1; possession of child pornography, as set out in § 18.2-374.1:1; electronic facilitation of pornography, as set out in § 18.2-374.3; incest, as set out in § 18.2-366; abuse or 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; (ii) convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, in the five years prior to the application date for employment; or (iii) convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, and continue on probation or parole or have failed to pay required court costs.

C. The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an individual is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history

674 record from the FBI. The information provided to the state facility or Department shall not be
675 disseminated except as provided in this section.

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

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

685 § 63.2-1719. Definitions.

686 As used in this subtitle:

687 "Barrier crime" means a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et
688 seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set
689 out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and
690 bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set
691 out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in
692 § 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
693 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
694 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
695 out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun
696 in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355,
697 crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking
698 indecent liberties with children as set out in § 18.2-370 or ~~§ 18.2-370.1~~, abuse and neglect of children as
699 set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314,
700 obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in
701 § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of
702 incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act
703 constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in
704 § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in
705 § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state. In
706 the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies,
707 "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of
708 Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out
709 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

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

717 § 63.2-1726. Background check required; children's residential facilities.

718 A. As a condition of employment, volunteering or providing services on a regular basis, every
719 children's residential facility that is regulated or operated by the Departments of Social Services;
720 Education; Military Affairs; or Mental Health, Mental Retardation and Substance Abuse Services shall
721 require any individual who (i) accepts a position of employment at such a facility who was not
722 employed by that facility prior to July 1, 1994, (ii) volunteers for such a facility on a regular basis and
723 will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility
724 prior to July 1, 1994, or (iii) provides contractual services directly to a juvenile for such facility on a
725 regular basis and will be alone with a juvenile in the performance of his duties who did not provide
726 such services prior to July 1, 1994; to submit to fingerprinting and to provide personal descriptive
727 information, to be forwarded along with the applicant's fingerprints through the Central Criminal
728 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history
729 record information regarding such applicant. The children's residential facility shall inform the applicant
730 that he is entitled to obtain a copy of any background check report and to challenge the accuracy and
731 completeness of any such report and obtain a prompt resolution before a final determination is made of
732 the applicant's fitness to have responsibility for the safety and well-being of children. The applicant shall
733 provide the children's residential facility with a written statement or affirmation disclosing whether he
734 has ever been convicted of or is the subject of pending charges for any offense within or outside the
735 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 medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379, or an equivalent offense in another state. If the applicant is denied employment, or the opportunity to volunteer or provide services at a children's residential facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to provide services pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position or denying the applicant unsupervised access to clients pending a final determination of the applicant's fitness to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

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

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

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

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

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

3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$3,890,132 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.