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HOUSE BILL NO. 574**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 1, 2008)

(Patron Prior to Substitute—Delegate Watts)

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, 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 amend the Code of Virginia by adding a section numbered 18.2-370.02, relating to indecent liberties with certain children; penalties.

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, 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, and that the Code of Virginia is amended by adding a section numbered 18.2-370.02 as follows:

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" includes:

1. Any offense listed in subsection B;
2. Criminal homicide;
3. Murder; and
4. A sexually violent offense.

B. The offenses included under this subsection include any violation of, attempted violation of, or conspiracy to violate:

1. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape, or subsection B or C of § 18.2-374.1:1; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5 or (iv) § 18.2-386.1;

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

2. Subsection C 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, 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.

C. "Criminal homicide" means a homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident.

D. "Murder" means a violation of, attempted violation of, or conspiracy to violate § 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.

E. "Sexually violent offense" means a violation of, attempted violation of, or conspiracy to violate:

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, § 18.2-370, § 18.2-370.02, or § 18.2-370.1 or § 18.2-374.1; or

2. § 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, 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 subsection C of § 18.2-374.1:1. 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;

3. If the offense was committed on or after July 1, 2006, § 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; or

4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as described in § 1591 of Title 18, U.S.C.).

F. "Offense for which registration is required" includes (i) any similar offense under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof or (ii) any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

60 G. 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 on or after July 1, 2005, of any offense for which registration is required, the court may, in
63 its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the
64 offense require offender registration. In making its determination, the court shall consider all of the
65 following factors that are relevant to the case: (i) the degree to which the delinquent act was committed
66 with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii)
67 the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the
68 offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the
69 offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the
70 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, the court shall fix the
75 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, 18.2-370, 18.2-370.02, or 18.2-370.1 or, where the
99 victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,
100 subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by
101 § 19.2-390 to the Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9
102 (§ 9.1-900 et seq.) 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
121 offense punishable by a maximum punishment of 40 years or more, except that the recommended

122 sentence for a defendant convicted of first degree murder who has previously been convicted of a
 123 violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be
 124 imprisonment for life;

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

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

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

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

149 C. For purposes of this chapter, violent felony offenses shall include solicitation to commit murder
 150 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
 151 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
 152 Class 5 felony violation of § 18.2-47; any felony violation of § 18.2-48, 18.2-48.1 or 18.2-49; any
 153 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,
 154 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
 155 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,
 156 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
 157 conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of
 158 subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of
 159 § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any
 160 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
 161 Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony
 162 violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an
 163 occupied dwelling; any violation of subsection B of § 18.2-280; any violation of § 18.2-281, 18.2-286.1,
 164 18.2-289 or 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of subsection A
 165 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
 166 subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312; any violation of
 167 subdivision (2) or (3) of § 18.2-355; any violation of former § 18.2-358; any violation of subsection B
 168 of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of § 18.2-368, 18.2-370,
 169 18.2-370.02, or 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of
 170 § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony
 171 violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense under
 172 §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408,
 173 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
 174 violation of § 18.2-477, 18.2-478, 18.2-480 or 18.2-485; any violation of § 53.1-203; or any conspiracy
 175 or attempt to commit any offense specified in this subsection, and any substantially similar offense
 176 under the laws of any state, the District of Columbia, the United States or its territories.

177 § 18.2-62. Testing of certain persons for human immunodeficiency virus or hepatitis B or C viruses.

178 A. As soon as practicable following arrest, the attorney for the Commonwealth may request, after
 179 consultation with any victim, that any person charged with (i) any crime involving sexual assault
 180 pursuant to this article, (ii) any offenses against children as prohibited by §§ 18.2-361, 18.2-366,
 181 18.2-370, 18.2-370.02, and 18.2-370.1, or (iii) any assault and battery in which the victim was exposed
 182 to body fluids of the person arrested, be requested to submit to testing for infection with human

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

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

195 B. Upon conviction, or adjudication as delinquent in the case of a juvenile, of any crime involving
196 sexual assault pursuant to this article or any offenses against children as prohibited by §§ 18.2-361,
197 18.2-366, 18.2-370, 18.2-370.02, and 18.2-370.1, the attorney for the Commonwealth may, after
198 consultation with any victim and, upon the request of any victim shall, request and the court shall order
199 the defendant to submit to testing for infection with human immunodeficiency virus or hepatitis B or C
200 viruses. Any test conducted following conviction shall be in addition to such tests as may have been
201 conducted following arrest pursuant to subsection A.

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

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

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

210 § 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.

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

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

220 1. Carnal knowledge of a child between ~~thirteen~~ 13 and ~~fifteen~~ 15 years of age in violation of
221 § 18.2-63 when the offense is committed by a person over the age of ~~eighteen~~ 18;

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

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

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

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

226 6. Taking indecent liberties with a child in violation of § 18.2-370, 18.2-370.02, or § 18.2-370.1; or

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

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

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

236 § 18.2-67.8. Closed preliminary hearings.

237 In preliminary hearings for offenses charged under this article or under §§ 18.2-361, 18.2-366,
238 18.2-370, 18.2-370.02, or § 18.2-370.1, the court may, on its own motion or at the request of the
239 Commonwealth, the complaining witness, the accused, or their counsel, exclude from the courtroom all
240 persons except officers of the court and persons whose presence, in the judgment of the court, would be
241 supportive of the complaining witness or the accused and would not impair the conduct of a fair
242 hearing.

243 § 18.2-370. Taking indecent liberties with children; penalties.

244 A. Any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally

commits any of the following acts with any child under the age of 15 years is guilty of a Class 5 felony:

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

(2) —Repealed.]

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

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

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

B. Any person 18 years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of 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 guilty of a Class 4 felony; provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

D. Any parent, step-parent, grandparent or step-grandparent who commits a violation of either this section, § 18.2-370.02, 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.

§ 18.2-370.02. Taking indecent liberties with certain children; penalties.

A. A person 18 years of age or over is guilty of taking indecent liberties with a child if he, with lascivious intent, knowingly and intentionally commits any of the following acts with any child:

1. Exposes his sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his sexual or genital parts to such person;

2. Proposes that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child;

3. Proposes to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361;

4. Commits sexual abuse of the child as defined in subdivision 6 of § 18.2-67.10;

5. Proposes that any such child engage in sexual intercourse or sodomy or the fondling of sexual or genital parts with another person;

6. Receives money, property, or any other remuneration for allowing, encouraging, or enticing such child to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or knowingly encourages such child to perform in or be a subject of sexually explicit material; or

7. Entices, allures, persuades, or invites any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this section.

B. Any person who commits a violation of subsection A (i) when the victim was less than 13 years of age or (ii) who is the parent, step-parent, grandparent, or step-grandparent of a victim who was less than 18 years of age at the time of the violation is guilty of a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 10 years and by a fine of not more than \$100,000. A parent, step-parent, grandparent, or step-grandparent of a victim who was less than 15 years of age at the time of the violation is guilty of a felony punishable by confinement in a state correctional facility for a term of not less than two nor more than 10 years and by a fine of not more than \$100,000.

C. Any person, who is not the parent, step-parent, grandparent, or step-grandparent of a victim and who (i) commits a violation of subdivisions A 1 through A 5 or subdivision A 7 when the victim was at least 13 but less than 15 years of age or (ii) commits a violation of subdivision A 6 when the victim was under 18 years of age is guilty of a Class 5 felony.

D. Any person who is not the parent, step-parent, grandparent, or step-grandparent of a victim and who commits a violation of subsection A when the victim was at least 15 years of age but less than 18 years of age and who maintained a custodial or supervisory relationship over such child and such child was not emancipated at the time of the violation is guilty of a Class 6 felony.

E. Any person who is convicted of an offense under this section and 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

306 of this section or of any offense set forth in subsection B of § 18.2-67.5:2 when the offenses were not
307 part of a common act, transaction, or scheme and the accused was at liberty as defined in § 53.1-151
308 between each such conviction, shall upon such conviction be sentenced to the maximum term authorized
309 for the offense hereunder and shall not have all or any part of his sentence suspended.

310 § 18.2-370.2. Sex offenses prohibiting proximity to children; penalty.

311 A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation
312 of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, or
313 subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii)
314 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
315 § 18.2-67.2, or subdivision A 1 or A 4 (a) of § 18.2-67.3, or §§ 18.2-370, 18.2-370.02, 18.2-370.1,
316 clause (ii) of § 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379. As of July 1, 2006, "offense
317 prohibiting proximity to children" shall include a violation of § 18.2-472.1, when the offense requiring
318 registration was one of the foregoing offenses.

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

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

327 § 19.2-268.2. Recent complaint hearsay exception.

328 Notwithstanding any other provision of law, in any prosecution for criminal sexual assault under
329 Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a violation of §§ 18.2-361, 18.2-366, 18.2-370,
330 18.2-370.02, or § 18.2-370.1, the fact that the person injured made complaint of the offense recently
331 after commission of the offense is admissible, not as independent evidence of the offense, but for the
332 purpose of corroborating the testimony of the complaining witness.

333 § 19.2-299. Investigations and reports by probation officers in certain cases.

334 A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of
335 § 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,
336 attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of
337 § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the
338 attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a
339 felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement
340 between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea
341 agreement or is found guilty by the court after a plea of not guilty; or (iii) the court shall when a person
342 is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a
343 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,
344 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,
345 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.02, 18.2-370.1, or
346 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5,
347 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report
348 upon the history of the accused, including a report of the accused's criminal record as an adult and
349 available juvenile court records, any information regarding the accused's participation or membership in
350 a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so
351 the court may determine the appropriate sentence to be imposed. Unless the defendant or the attorney
352 for the Commonwealth objects, the court may order that the report contain no more than the defendant's
353 criminal history, any history of substance abuse, any physical or health-related problems as may be
354 pertinent, and any applicable sentencing guideline worksheets. This expedited report shall be subject to
355 all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The
356 probation officer, after having furnished a copy of this report at least five days prior to sentencing to
357 counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his
358 report in advance of the sentencing hearing to the judge in chambers, who shall keep such report
359 confidential. Counsel for the accused may provide the accused with a copy of the presentence report.
360 The probation officer shall be available to testify from this report in open court in the presence of the
361 accused, who shall have been provided with a copy of the presentence report by his counsel or advised
362 of its contents and be given the right to cross-examine the investigating officer as to any matter
363 contained therein and to present any additional facts bearing upon the matter. The report of the
364 investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part
365 of the record in the case. Any report so filed shall be made available only by court order and shall be
366 sealed upon final order by the court, except that such reports or copies thereof shall be available at any
367 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 and blood, saliva, or tissue sample 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. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. 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.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

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, 18.2-370, 18.2-370.02, 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. 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, § 18.2-370.02, or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state. However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor specified in this section not involving abuse or neglect, if five years have elapsed following the conviction.

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

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

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

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

C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this

section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.

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

A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by a mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370, § 18.2-370.02, 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 requirement of law for such further dissemination.

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

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

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

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

§ 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 in § 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, 18.2-370.02, 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 record from the FBI. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

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

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

§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 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, § 18.2-370.02, 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, 2007, (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, 2007, 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, 2007; 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 eligibility 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. The results of the criminal history background check must be received prior to permitting an applicant to work with children.

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 is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Military Affairs; or Social Services shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been (i) convicted of or are 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; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily 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; 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 § 18.2-361; taking indecent liberties with children as set out in § 18.2-370, § 18.2-370.02, or § 18.2-370.1; abuse or neglect of children as set out in § 18.2-371.1, including 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; 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; or (ii) convicted of any felony violation relating to possession of drugs 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, to be a volunteer, or to provide contractual services; 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. The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for compensated employment or for volunteer or contractual service purposes persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment, volunteer, or contractual services.

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 assume duties that do not involve contact with children pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position pending a final determination of the applicant's eligibility 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.

C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall 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 receive the results of the central registry search prior to permitting an applicant to work alone with children. Children's residential facilities regulated or operated by the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Military Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect. Every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to obtain a copy of the information from the central registry.

D. 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, 18.2-370.02, 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 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 \$525,617 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.