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SENATE BILL NO. 1422

Offered January 14, 2009

A BILL to amend and reenact §§ 8.01-44.4, 8.01-226.9, 16.1-253.2, 18.2-11, 18.2-23, 18.2-46.1, 18.2-46.3, 18.2-57, 18.2-57.2, 18.2-60.3, 18.2-95, 18.2-96.1, 18.2-97, 18.2-103, 18.2-104, 18.2-105.1, 18.2-108.01, 18.2-111, 18.2-152.3, 18.2-152.8, 18.2-181, 18.2-181.1, 18.2-182, 18.2-186, 18.2-186.3, 18.2-187.1, 18.2-188, 18.2-195, 18.2-195.2, 18.2-197, 18.2-270, 18.2-340.37, 19.2-8, 19.2-81, 19.2-215.1, 19.2-270.1, 19.2-289, 19.2-290, 19.2-299.2, 32.1-321.4, 46.2-301, 46.2-341.28, 46.2-357, and 63.2-525 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 18.2-95.1, relating to penalties for various crimes.

Patron—Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-44.4, 8.01-226.9, 16.1-253.2, 18.2-11, 18.2-23, 18.2-46.1, 18.2-46.3, 18.2-57, 18.2-57.2, 18.2-60.3, 18.2-95, 18.2-96.1, 18.2-97, 18.2-103, 18.2-104, 18.2-105.1, 18.2-108.01, 18.2-111, 18.2-152.3, 18.2-152.8, 18.2-181, 18.2-181.1, 18.2-182, 18.2-186, 18.2-186.3, 18.2-187.1, 18.2-188, 18.2-195, 18.2-195.2, 18.2-197, 18.2-270, 18.2-340.37, 19.2-8, 19.2-81, 19.2-215.1, 19.2-270.1, 19.2-289, 19.2-290, 19.2-299.2, 32.1-321.4, 46.2-301, 46.2-341.28, 46.2-357, and 63.2-525 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-95.1 as follows:

§ 8.01-44.4. Action for shoplifting and employee theft.

A. A merchant may recover a civil judgment against any adult or emancipated minor who shoplifts from that merchant for two times the unpaid retail value of the merchandise, but in no event an amount less than $50. However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than $350.

B. A merchant may recover a civil judgment against any person who commits employee theft for two times the unpaid retail value of the merchandise, but in no event an amount less than $50. However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than $350.

C. The prevailing party in any action brought pursuant to this section shall be entitled to reasonable attorneys' fees and costs not to exceed $150.

D. A conviction of or a plea of guilty to a violation of any other statute is not a prerequisite to commencement of a civil action pursuant to this section or enforcement of a judgment. No action may be initiated under this section if any criminal action has been initiated against the perpetrator for the alleged offense under § 18.2-95, *18.2-95.1*, 18.2-96, 18.2-102.1, or 18.2-103 or any other criminal offense defined under subsection F. However, nothing herein shall preclude a merchant from nonsuiting the civil action brought pursuant to this section and proceeding criminally under § 18.2-95, *18.2-95.1*, 18.2-96, 18.2-102.1, or 18.2-103 or any other criminal offense defined under subsection F.

E. Prior to the commencement of any action under this section, a merchant may demand, in writing, that an individual who may be civilly liable under this section make appropriate payment to the merchant in consideration for the merchant's agreement not to commence any legal action under this section.

F. For purposes of this section:

"Employee theft" means the removal of any merchandise or cash from the premises of the merchant's establishment or the concealment of any merchandise or cash by a person employed by a merchant without the consent of the merchant and with the purpose or intent of appropriating the merchandise or cash to the employee's own or another's use without full payment.

"Shoplift" means any one or more of the following acts committed by a person without the consent of the merchant and with the purpose or intent of appropriating merchandise to that person's own or another's use without payment, obtaining merchandise at less than its stated sales price, or otherwise depriving a merchant of all or any part of the value or use of merchandise: (i) removing any merchandise from the premises of the merchant's establishment; (ii) concealing any merchandise; (iii) substituting, altering, removing, or disfiguring any label or price tag; (iv) transferring any merchandise from a container in which that merchandise is displayed or packaged to any other container; (v) disarming any alarm tag attached to any merchandise; or (vi) obtaining or attempting to obtain possession of any merchandise by charging that merchandise to another person without the authority of that person or by charging that merchandise to a fictitious person.

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

A merchant, agent or employee of the merchant, who causes the arrest or detention of any person pursuant to the provisions of §§ 18.2-95, *18.2-95.1,* 18.2-96 or § 18.2-103, shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his agent or employee, provided that, in causing the arrest or detention of such person, the merchant, agent or employee of the merchant, had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located shall constitute probable cause for the detention of such person by such merchant, his agent or employee, provided such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an antishoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected area within such premises, of specially marked or tagged merchandise.

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or subsection B of § 20-103, which prohibits such person from going or remaining upon land, buildings or premises or from further acts of family abuse, or which prohibits contacts between the respondent and the respondent's family or household member as the court deems appropriate is guilty of a Class 1 misdemeanor. ~~The punishment for any~~ *Any* person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, ~~shall include~~ *is guilty of an Aggravated Class 1 misdemeanor, with* a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months.

If the respondent commits an assault and battery upon any party protected by the protective order, resulting in serious bodily injury to the party, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date of conviction.

§ 18.2-11. Punishment for conviction of misdemeanor.

The authorized punishments for conviction of a misdemeanor are:

(a) *For Aggravated Class 1 misdemeanors, confinement in jail for not more than 24 months and a fine of not more than $2,500, either or both.*

(b) For Class 1 misdemeanors, confinement in jail for not more than ~~twelve~~ *12* months and a fine of not more than $2,500, either or both.

(~~b~~*c*) For Class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than $1,000, either or both.

(~~c~~*d*) For Class 3 misdemeanors, a fine of not more than $500.

(~~d~~*e*) For Class 4 misdemeanors, a fine of not more than $250.

For a misdemeanor offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

§ 18.2-23. Conspiring to trespass or commit larceny.

A. If any person shall conspire, confederate or combine with another or others in the Commonwealth to go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, having knowledge that any of them have been forbidden, either orally or in writing, to do so by the owner, lessee, custodian or other person lawfully in charge thereof, or having knowledge that any of

them have been forbidden to do so by a sign or signs posted on such lands, buildings, premises or part, portion or area thereof at a place or places where it or they may reasonably be seen, he ~~shall be deemed~~ *is* guilty of a Class 3 misdemeanor.

B. If any person shall conspire, confederate or combine with another or others in the Commonwealth to commit larceny or counsel, assist, aid or abet another in the performance of a larceny, where the aggregate value of the goods or merchandise involved is more than ~~$200~~ *$500,* he is guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than 20 years. *If the aggregate value of the goods or merchandise involved is $200 or more but less than $500, he is guilty of an Aggravated Class 1 misdemeanor.* The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise. A violation of this subsection constitutes a separate and distinct felony.

C. Jurisdiction for the trial of any person charged under this section shall be in the county or city wherein any part of such conspiracy is planned, or in the county or city wherein any act is done toward the consummation of such plan or conspiracy.

§ 18.2-46.1. Definitions.

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

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

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

"Predicate criminal act" means (i) an act of violence; (ii) any violation of § 18.2-42, 18.2-46.3, 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-53.1, 18.2-55, 18.2-56.1, 18.2-57, 18.2-57.2, 18.2-59, 18.2-83, *18.2-95, 18.2-95.1, 18.2-96, 18.2-103, 18.2-105.2, 18.2-108.01, 18.2-108.1,* 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, subsection H, H 1 or H 2 of § 18.2-248, § 18.2-248.01, 18.2-255, 18.2-255.2, 18.2-282.1, 18.2-286.1, 18.2-287.4, 18.2-308.1, or 18.2-356; (iii) a second or subsequent felony violation of subsection C of § 18.2-248 or of § 18.2-248.1; (iv) any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (v) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

§ 18.2-46.3. Recruitment of persons for criminal street gang; penalty.

A. Any person who solicits, invites, recruits, encourages or otherwise causes or attempts to cause another to actively participate in or become a member of what he knows to be a criminal street gang is guilty of ~~a~~ *an Aggravated* Class 1 misdemeanor. Any person age 18 years or older who solicits, invites, recruits, encourages or otherwise causes or attempts to cause a juvenile to actively participate in or become a member of what he knows to be a criminal street gang is guilty of a Class 6 felony.

B. Any person who, in order to encourage an individual (a) to join a criminal street gang, (b) to remain as a participant in or a member of a criminal street gang, or (c) to submit to a demand made by a criminal street gang to commit a felony violation of this title, (i) uses force against the individual or a member of his family or household or (ii) threatens force against the individual or a member of his family or household, which threat would place any person in reasonable apprehension of death or bodily injury, is guilty of a Class 6 felony. The definition of "family or household member" set forth in § 16.1-228 applies to this section.

§ 18.2-57. Assault and battery.

A. Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor~~, and if~~ . *If* the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, *he shall be guilty of an Aggravated Class 1 misdemeanor and* the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a law-enforcement officer as defined hereinafter, a correctional officer as defined in § 53.1-1, a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the

Department, a firefighter as defined in § 65.2-102, or a volunteer firefighter or lifesaving or rescue squad member who is a member of a bona fide volunteer fire department or volunteer rescue or emergency medical squad regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or members as employees, engaged in the performance of his public duties, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of ~~a~~ *an Aggravated* Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum sentence of confinement of six months.

E. As used in this section:

"Judge" means any justice or judge of a court of record of the Commonwealth including a judge designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers' Compensation Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district court.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, conservation police officers appointed pursuant to § 29.1-200, and full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

"School security officer" means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

F. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any teacher, teacher aide, principal, assistant principal, guidance counselor, school security officer, school bus driver or school bus aide, while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a teacher, teacher aide, principal, assistant principal, guidance counselor, school security officer, school bus driver, or school bus aide at the time of the event.

§ 18.2-57.2. Assault and battery against a family or household member; penalty.

A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.

A1. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that such person has been previously convicted within five years of an offense against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding in violation of § 18.2-51, (iii) aggravated malicious wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, or (v) an offense under the

law of any other jurisdiction, which has the same elements of any of the above offenses, and each offense occurred on a different date, such person is guilty of an Aggravated Class 1 misdemeanor.

B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding in violation of § 18.2-51, (iii) aggravated malicious wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, or (v) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person is guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in § 16.1-228 applies to this section.

§ 18.2-60.3. Stalking; penalty.

A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.

A1. A second or subsequent conviction occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction shall be an Aggravated Class 1 misdemeanor.

B. A third or subsequent conviction occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction shall be a Class 6 felony.

C. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.

D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least ~~fifteen~~ *15* days prior to release of a person sentenced to a term of incarceration of more than ~~thirty~~ *30* days or, if the person was sentenced to a term of incarceration of at least ~~forty-eight~~ *48* hours but no more than ~~thirty~~ *30* days, ~~twenty-four~~ *24* hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

F. For purposes of this section:

"Family or household member" has the same meaning as provided in § 16.1-228.

§ 18.2-95. Grand larceny defined; how punished.

Any person who (i) commits larceny from the person of another of money or other thing of value of $5 or more, (ii) commits simple larceny not from the person of another of goods and chattels of the value of ~~$200~~ *$500* or more, or (iii) commits simple larceny not from the person of another of any firearm, regardless of the firearm's value, shall be guilty of grand larceny, punishable by imprisonment

in a state correctional facility for not less than one nor more than ~~twenty~~ *20* years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding ~~twelve~~ *12* months or fined not more than $2,500, either or both.

18.2-95.1. Aggravated petit larceny defined; how punished.

Any person who commits simple larceny not from the person of another of goods and chattels of the value of $200 or more but less than $500, except as provided in clause (iii) of § 18.2-95, is guilty of aggravated petit larceny, which shall be punishable as an Aggravated Class 1 misdemeanor. Upon conviction, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.

§ 18.2-96.1. Identification of certain personalty.

A. The owner of personal property may permanently mark such property, including any part thereof, for the purpose of identification with the social security number of the owner, preceded by the letters "VA."

B. [Repealed.]

C. It shall be unlawful for any person to remove, alter, deface, destroy, conceal, or otherwise obscure the manufacturer's serial number or marks, including personalty marked with a social security number preceded by the letters "VA," from such personal property or any part thereof, without the consent of the owner, with intent to render it or other property unidentifiable.

D. It shall be unlawful for any person to possess such personal property or any part thereof, without the consent of the owner, knowing that the manufacturer's serial number or any other distinguishing identification number or mark, including personalty marked with a social security number preceded by the letters "VA," has been removed, altered, defaced, destroyed, concealed, or otherwise obscured with the intent to violate the provisions of this section.

E. A person in possession of such property which is otherwise in violation of this section may apply in writing to the Bureau of Criminal Investigation, Virginia State Police, for assignment of a number for the personal property providing he can show that he is the lawful owner of the property. If a number is issued in conformity with the provisions of this section, then the person to whom it was issued and any person to whom the property is lawfully disposed of shall not be in violation of this section. This subsection shall apply only when the application has been filed by a person prior to arrest or authorization of a warrant of arrest for that person by a court.

F. Any person convicted of an offense under this section, when the value of the personalty is less than $200, shall be guilty of a Class 1 misdemeanor and, when the value of the personalty is $200 or more *but less than $500, shall be guilty of an Aggravated Class 1 misdemeanor, and when the value of the personalty is $500 or more*, shall be guilty of a Class 5 felony.

§ 18.2-97. Larceny of certain animals and poultry.

Any person who shall be guilty of the larceny of a dog, horse, pony, mule, cow, steer, bull or calf shall be guilty of a Class 5 felony; and any person who shall be guilty of the larceny of any poultry of the value of $5 ~~dollars~~ or more, but of the value of less than ~~$200~~ *$500*, or of a sheep, lamb, swine, or goat, of the value of less than ~~$200~~ *$500*, shall be guilty of a Class 6 felony.

§ 18.2-103. Concealing or taking possession of merchandise; altering price tags; transferring goods from one container to another; counseling, etc., another in performance of such acts.

Whoever, without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of the goods or merchandise, (i) willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment, or (ii) alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another, or (iii) counsels, assists, aids or abets another in the performance of any of the above acts, when the value of the goods or merchandise involved in the offense is less than $200, shall be guilty of petit larceny and, when the value of the goods or merchandise involved in the offense is $200 or more *but less than $500, shall be guilty of aggravated petit larceny, and when the value of the goods or merchandise involved in the offense is $500 or more*, shall be guilty of grand larceny. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise.

§ 18.2-104. Punishment for conviction of misdemeanor larceny.

When a person is convicted of an offense of larceny or any offense deemed to be or punished as larceny under any provision of the Code, and it is alleged in the warrant, indictment or information on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has been before convicted in the Commonwealth of Virginia or in another jurisdiction for any offense of larceny or any offense deemed or punishable as larceny, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies or a combination thereof, he shall be confined in jail not less than ~~thirty~~ *30* days nor more than ~~twelve~~ *24*

months; and for a third, or any subsequent offense, he shall be guilty of a Class 6 felony.

§ 18.2-105.1. Detention of suspected shoplifter.

A merchant, agent or employee of the merchant, who has probable cause to believe that a person has shoplifted in violation of § 18.2-95 ~~or §~~ *, 18.2-95.1 ,* 18.2-96 or ~~§~~ 18.2-103, on the premises of the merchant, may detain such person for a period not to exceed one hour pending arrival of a law-enforcement officer.

§ 18.2-108.01. Larceny with intent to sell or distribute; sale of stolen property; penalty.

A. Any person who commits larceny of property with a value of ~~$200~~ *$500* or more with the intent to sell or distribute such property is guilty of a felony punishable by confinement in a state correctional facility for not less than two years nor more than 20 years. The larceny of more than one item of the same product is prima facie evidence of intent to sell or intent to distribute for sale.

B. Any person who sells, attempts to sell or possesses with intent to sell or distribute any stolen property with an aggregate value of ~~$200~~ *$500* or more where he knew or should have known that the property was stolen is guilty of a Class 5 felony.

C. A violation of this section constitutes a separate and distinct offense.

§ 18.2-111. Embezzlement deemed larceny; indictment.

If any person wrongfully and fraudulently use, dispose of, conceal or embezzle any money, bill, note, check, order, draft, bond, receipt, bill of lading or any other personal property, tangible or intangible, which he shall have received for another or for his employer, principal or bailor, or by virtue of his office, trust, or employment, or which shall have been entrusted or delivered to him by another or by any court, corporation or company, he shall be guilty of embezzlement. Proof of embezzlement shall be sufficient to sustain the charge of larceny. Any person convicted hereunder shall be deemed guilty of larceny and may be indicted as for larceny and upon conviction shall be punished as provided in § 18.2-95*, 18.2-95.1* or ~~§~~ 18.2-96.

§ 18.2-152.3. Computer fraud; penalty.

Any person who uses a computer or computer network, without authority and:

1. Obtains property or services by false pretenses;

2. Embezzles or commits larceny; or

3. Converts the property of another;

is guilty of the crime of computer fraud.

If the value of the property or services obtained is ~~$200~~ *$500* or more, the crime of computer fraud shall be punishable as a Class 5 felony. *Where the value of the property or services obtained is $200 or more but less than $500, the crime of computer fraud shall be punishable as an Aggravated Class 1 misdemeanor.* Where the value of the property or services obtained is less than $200, the crime of computer fraud shall be punishable as a Class 1 misdemeanor.

§ 18.2-152.8. Property capable of embezzlement.

For purposes of §§ 18.2-95, *18.2-95.1,* 18.2-96, 18.2-108, and 18.2-111, personal property subject to embezzlement, larceny, or receiving stolen goods shall include:

1. Computers and computer networks;

2. Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

a. Tangible or intangible;

b. In a format readable by humans or by a computer;

c. In transit between computers or within a computer network or between any devices which comprise a computer; or

d. Located on any paper or in any device on which it is stored by a computer or by a human; and

3. Computer services.

§ 18.2-181. Issuing bad checks, etc., larceny.

Any person who, with intent to defraud, shall make or draw or utter or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company, or other depository, knowing, at the time of such making, drawing, uttering or delivering, that the maker or drawer has not sufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of larceny; and, if this check, draft, or order has a represented value of ~~$200~~ *$500* or more, such person shall be guilty of a Class 6 felony. *In cases in which such value is $200 or more but less than $500, such person shall be guilty of an Aggravated Class 1 misdemeanor.* In cases in which such value is less than $200, the person shall be guilty of a Class 1 misdemeanor.

The word "credit" as used herein, shall be construed to mean any arrangement or understanding with the bank, trust company, or other depository for the payment of such check, draft or order.

Any person making, drawing, uttering or delivering any such check, draft or order in payment as a present consideration for goods or services for the purposes set out in this section shall be guilty as

provided herein.

§ 18.2-181.1. Issuance of bad checks.

It shall be a Class 6 felony for any person, within a period of ~~ninety~~ *90* days, to issue two or more checks, drafts or orders for the payment of money in violation of § 18.2-181, which have an aggregate represented value of ~~$200~~ *$500* or more and which (i) are drawn upon the same account of any bank, banking institution, trust company or other depository and (ii) are made payable to the same person, firm or corporation. *If the aggregate represented value of the checks, drafts, or orders for the payment of money is $200 or more but less than $500, it shall be an Aggravated Class 1 misdemeanor.*

§ 18.2-182. Issuing bad checks on behalf of business firm or corporation in payment of wages; penalty.

Any person who shall make, draw, or utter, or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company or other depository on behalf of any business firm or corporation, for the purpose of paying wages to any employee of such firm or corporation, or for the purpose of paying for any labor performed by any person for such firm or corporation, knowing, at the time of such making, drawing, uttering or delivering, that the account upon which such check, draft or order is drawn has not sufficient funds, or credit with, such bank, banking institution, trust company or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of a Class 1 misdemeanor; except that if this check, draft, or order has a represented value of $200 or more *but less than $500, such person shall be guilty of an Aggravated Class 1 misdemeanor, and if this check, draft, or order has a represented value of $500 or more,* such person shall be guilty of a Class 6 felony.

The word "credit," as used herein, shall be construed to mean any arrangement or understanding with the bank, banking institution, trust company, or other depository for the payment of such check, draft or order.

In addition to the criminal penalty set forth herein, such person shall be personally liable in any civil action brought upon such check, draft or order.

§ 18.2-186. False statements to obtain property or credit.

A. A person shall be guilty of a Class 1 misdemeanor if he makes, causes to be made or conspires to make directly, indirectly or through an agency, any materially false statement in writing, knowing it to be false and intending that it be relied upon, concerning the financial condition or means or ability to pay of himself, or of any other person for whom he is acting, or any firm or corporation in which he is interested or for which he is acting, for the purpose of procuring, for his own benefit or for the benefit of such person, firm or corporation, the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note.

B. Any person who knows that a false statement has been made in writing concerning the financial condition or ability to pay of himself or of any person for whom he is acting, or any firm or corporation in which he is interested or for which he is acting and who, with intent to defraud, procures, upon the faith thereof, for his own benefit, or for the benefit of the person, firm or corporation in which he is interested or for which he is acting, any such delivery, payment, loan, credit, extension, discount making, acceptance, sale or endorsement, shall, if the value of the thing or the amount of the loan, credit or benefit obtained is ~~$200~~ *$500* or more, be guilty of grand larceny or, if the value is *$200 or more but less than $500, be guilty of aggravated petit larceny, or if the value is* less than $200, be guilty of petit larceny.

C. Venue for the trial of any person charged with an offense under this section may be in the county or city in which (i) any act was performed in furtherance of the offense, or (ii) the person charged with the offense resided at the time of the offense.

D. As used in this section, "in writing" shall include information transmitted by computer, facsimile, e-mail, Internet, or any other electronic medium, and shall not include information transmitted by any such medium by voice transmission.

§ 18.2-186.3. Identity theft; penalty; restitution; victim assistance.

A. It shall be unlawful for any person, without the authorization or permission of the person or persons who are the subjects of the identifying information, with the intent to defraud, for his own use or the use of a third person, to:

1. Obtain, record or access identifying information which is not available to the general public that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

2. Obtain goods or services through the use of identifying information of such other person;

3. Obtain identification documents in such other person's name; or

4. Obtain, record or access identifying information while impersonating a law-enforcement officer or an official of the government of the Commonwealth.

B. It shall be unlawful for any person without the authorization or permission of the person who is

the subject of the identifying information, with the intent to sell or distribute the information to another to:

1. Fraudulently obtain, record or access identifying information that is not available to the general public that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

2. Obtain goods or services through the use of identifying information of such other person;

3. Obtain identification documents in such other person's name; or

4. Obtain, record or access identifying information while impersonating a law-enforcement officer or an official of the Commonwealth.

B1. It shall be unlawful for any person to use identification documents or identifying information of another person, whether that person is dead or alive, or of a false or fictitious person, to avoid summons, arrest, prosecution or to impede a criminal investigation.

C. As used in this section, "identifying information" shall include but not be limited to: (i) name; (ii) date of birth; (iii) social security number; (iv) driver's license number; (v) bank account numbers; (vi) credit or debit card numbers; (vii) personal identification numbers (PIN); (viii) electronic identification codes; (ix) automated or electronic signatures; (x) biometric data; (xi) fingerprints; (xii) passwords; or (xiii) any other numbers or information that can be used to access a person's financial resources, obtain identification, act as identification, or obtain goods or services.

D. Violations of this section shall be punishable as a Class 1 misdemeanor. Any violation resulting in financial loss of greater than $200 shall be punishable as *an Aggravated Class 1 misdemeanor, and any violation resulting in financial loss of $500 or greater shall be punishable as* a Class 6 felony. Any second or subsequent conviction shall be punishable as a Class 6 felony. Any violation of subsection B where five or more persons' identifying information has been obtained, recorded, or accessed in the same transaction or occurrence shall be punishable as a Class 6 felony. Any violation of subsection B where 50 or more persons' identifying information has been obtained, recorded, or accessed in the same transaction or occurrence shall be punishable as a Class 5 felony. Any violation resulting in the arrest and detention of the person whose identification documents or identifying information were used to avoid summons, arrest, prosecution, or to impede a criminal investigation shall be punishable as a Class 6 felony. In any proceeding brought pursuant to this section, the crime shall be considered to have been committed in any locality where the person whose identifying information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in such locality.

E. Upon conviction, in addition to any other punishment, a person found guilty of this offense shall be ordered by the court to make restitution as the court deems appropriate to any person whose identifying information was appropriated or to the estate of such person. Such restitution may include the person's or his estate's actual expenses associated with correcting inaccuracies or errors in his credit report or other identifying information.

F. Upon the request of a person whose identifying information was appropriated, the Attorney General may provide assistance to the victim in obtaining information necessary to correct inaccuracies or errors in his credit report or other identifying information; however, no legal representation shall be afforded such person.

§ 18.2-187.1. Obtaining or attempting to obtain oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service without payment; penalty; civil liability.

A. It shall be unlawful for any person knowingly, with the intent to defraud, to obtain or attempt to obtain, for himself or for another, oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service by the use of any false information, or in any case where such service has been disconnected by the supplier and notice of disconnection has been given.

B. It shall be unlawful for any person to obtain or attempt to obtain oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service by the use of any scheme, device, means or method, or by a false application for service with intent to avoid payment of lawful charges therefor.

B1. It shall be unlawful for any person to obtain, or attempt to obtain, electronic communication service as defined in § 18.2-190.1 by the use of an unlawful electronic communication device as defined in § 18.2-190.1.

C. The word "notice" as used in subsection A shall be notice given in writing to the person to whom the service was assigned. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last known address, requiring delivery to the addressee only with return receipt requested, and the actual signing of the receipt for such mail by the addressee, shall be prima facie evidence that such notice was duly received.

D. Any person who violates any provisions of this section, if the value of service, credit or benefit procured is ~~$200~~ *$500* or more, shall be guilty of a Class 6 felony; or if the value is *more than $200*

but less than $500, shall be guilty of an Aggravated Class 1 misdemeanor; or if the value is less than $200, shall be guilty of a Class 1 misdemeanor. In addition, the court may order restitution for the value of the services unlawfully used and for all costs. Such costs shall be limited to actual expenses, including the base wages of employees acting as witnesses for the Commonwealth, and suit costs. However, the total amount of allowable costs granted hereunder shall not exceed $250, excluding the value of the service.

E. Any party providing oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service who is aggrieved by a violation of this section may, in a civil proceeding in any court of competent jurisdiction, seek both injunctive and equitable relief, and an award of damages, including attorney's fees and costs. In addition to any other remedy provided by law, the party aggrieved may recover an award of actual damages or $500 whichever is greater for each action.

§ 18.2-188. Defrauding hotels, motels, campgrounds, boardinghouses, etc.

It shall be unlawful for any person, without paying therefor, and with the intent to cheat or defraud the owner or keeper to:

1. Put up at a hotel, motel, campground or boardinghouse;

2. Obtain food from a restaurant or other eating house;

3. Gain entrance to an amusement park; or

4. Without having an express agreement for credit, procure food, entertainment or accommodation from any hotel, motel, campground, boardinghouse, restaurant, eating house or amusement park.

It shall be unlawful for any person, with intent to cheat or defraud the owner or keeper out of the pay therefor to obtain credit at a hotel, motel, campground, boardinghouse, restaurant or eating house for food, entertainment or accommodation by means of any false show of baggage or effects brought thereto.

It shall be unlawful for any person, with intent to cheat or defraud, to obtain credit at a hotel, motel, campground, boardinghouse, restaurant, eating house or amusement park for food, entertainment or accommodation through any misrepresentation or false statement.

It shall be unlawful for any person, with intent to cheat or defraud, to remove or cause to be removed any baggage or effects from a hotel, motel, campground, boardinghouse, restaurant or eating house while there is a lien existing thereon for the proper charges due from him for fare and board furnished.

Any person who violates any provision of this section shall, if the value of service, credit or benefit procured or obtained is ~~$200~~ *$500* or more, be guilty of a Class 5 felony; or if the value is *$200 or more but less than $500, be guilty of an Aggravated Class 1 misdemeanor; or if the value is* less than $200, a Class 1 misdemeanor.

§ 18.2-195. Credit card fraud; conspiracy; penalties.

(1) A person is guilty of credit card fraud when, with intent to defraud any person, he:

(a) Uses for the purpose of obtaining money, goods, services or anything else of value a credit card or credit card number obtained or retained in violation of § 18.2-192 or a credit card or credit card number which he knows is expired or revoked;

(b) Obtains money, goods, services or anything else of value by representing (i) without the consent of the cardholder that he is the holder of a specified card or credit card number or (ii) that he is the holder of a card or credit card number and such card or credit card number has not in fact been issued;

(c) Obtains control over a credit card or credit card number as security for debt; or

(d) Obtains money from an issuer by use of an unmanned device of the issuer or through a person other than the issuer when he knows that such advance will exceed his available credit with the issuer and any available balances held by the issuer.

(2) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card or credit card number by the cardholder, or any agent or employee of such person, is guilty of a credit card fraud when, with intent to defraud the issuer or the cardholder, he:

(a) Furnishes money, goods, services or anything else of value upon presentation of a credit card or credit card number obtained or retained in violation of § 18.2-192, or a credit card or credit card number which he knows is expired or revoked;

(b) Fails to furnish money, goods, services or anything else of value which he represents or causes to be represented in writing or by any other means to the issuer that he has furnished; or

(c) Remits to an issuer or acquirer a record of a credit card or credit card number transaction which is in excess of the monetary amount authorized by the cardholder.

(3) Conviction of credit card fraud is punishable as a Class 1 misdemeanor if the value of all money, goods, services and other things of value furnished in violation of this section, or if the difference between the value of all money, goods, services and anything else of value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed $200 in any six-month period; conviction of credit card fraud is punishable as *an Aggravated Class 1*

misdemeanor if such value is $200 or more but does not exceed $500 in any six-month period, and is punishable as a Class 6 felony if such value exceeds ~~$200~~ *$500* in any six-month period.

(4) Any person who conspires, confederates or combines with another, (i) either within or without the Commonwealth to commit credit card fraud within the Commonwealth or (ii) within the Commonwealth to commit credit card fraud within or without the Commonwealth, is guilty of a Class 6 felony.

§ 18.2-195.2. Fraudulent application for credit card; penalties.

A. A person shall be guilty of a Class 1 misdemeanor if he makes, causes to be made or conspires to make, directly, indirectly or through an agency, any materially false statement in writing concerning the financial condition or means or ability to pay of himself or of any other person for whom he is acting or any firm or corporation in which he is interested or for which he is acting, knowing the statement to be false and intending that it be relied upon for the purpose of procuring a credit card. However, if the statement is made in response to an unrequested written solicitation from the issuer or an agent of the issuer to apply for a credit card, he shall be guilty of a Class 4 misdemeanor.

B. A person who knows that a false statement has been made in writing concerning the financial condition or ability to pay of himself or of any person for whom he is acting or any firm or corporation in which he is interested or for which he is acting and who with intent to defraud, procures a credit card, upon the faith of such false statement, for his own benefit, or for the benefit of the person, firm or corporation in which he is interested or for which he is acting, and obtains by use of the credit card, money, property, services or any thing of value, is guilty of grand larceny if the value of whatever is obtained is ~~$200~~ *$500* or more or *aggravated petit larceny if the value is $200 or more but less than $500, or* petit larceny if the value is less than $200.

C. As used in this section, "in writing" shall include information transmitted by computer, facsimile, e-mail, Internet, or any other electronic medium, and shall not include information transmitted by any such medium by voice transmission.

§ 18.2-197. Criminally receiving goods and services fraudulently obtained.

A person is guilty of criminally receiving goods and services fraudulently obtained when he receives money, goods, services or anything else of value obtained in violation of subsection (1) of § 18.2-195 with the knowledge or belief that the same were obtained in violation of subsection (1) of § 18.2-195. Conviction of criminal receipt of goods and services fraudulently obtained is punishable as a Class 1 misdemeanor if the value of all money, goods, services and anything else of value, obtained in violation of this section, does not exceed $200 in any six-month period; conviction of criminal receipt of goods and services fraudulently obtained is punishable as *an Aggravated Class 1 misdemeanor if such value is $200 or more but does not exceed $500 in any six-month period; and is punishable as* a Class 6 felony if such value exceeds ~~$200~~ *$500* in any six-month period.

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor with a mandatory minimum fine of $250. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of five days or, if the level was more than 0.20, for an additional mandatory minimum period of 10 days.

B. 1. Any person convicted of a second offense committed within less than five years after a prior offense under § 18.2-266 shall upon conviction of the second offense be *guilty of an Aggravated Class 1 misdemeanor and* punished by a mandatory minimum fine of $500 and by confinement in jail for not less than one month nor more than ~~one year~~ *24 months*. Twenty days of such confinement shall be a mandatory minimum sentence.

2. Any person convicted of a second offense committed within a period of five to 10 years of a prior offense under § 18.2-266 shall upon conviction of the second offense be *guilty of an Aggravated Class 1 misdemeanor and* punished by a mandatory minimum fine of $500 and by confinement in jail for not less than one month. Ten days of such confinement shall be a mandatory minimum sentence.

3. Upon conviction of a second offense within 10 years of a prior offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of 10 days or, if the level was more than 0.20, for an additional mandatory minimum period of 20 days. In addition, such person shall be fined a mandatory minimum fine of $500.

C. 1. Any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall upon conviction of the third offense be guilty of a Class 6 felony. The sentence of any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall include a mandatory minimum sentence of 90 days, unless the three offenses were committed within a five-year period, in which case the sentence shall include a mandatory minimum sentence of confinement for six months. In addition, such person shall be fined a mandatory minimum fine of $1,000.

2. The punishment of any person convicted of a fourth or subsequent offense of § 18.2-266 committed within a 10-year period shall, upon conviction, include a mandatory minimum term of imprisonment of one year. In addition, such person shall be fined a mandatory minimum fine of $1,000. Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed three years.

3. The vehicle solely owned and operated by the accused during the commission of a felony violation of § 18.2-266 shall be subject to seizure and forfeiture. After an arrest for a felony violation of § 18.2-266, the Commonwealth may file an information in accordance with § 19.2-386.1. If the information is filed, the Commonwealth shall notify the Commissioner of the Department of Motor Vehicles that the property is subject to seizure. The Commissioner shall act upon such notification pursuant to the provisions for certification and notice applicable to a seizure under § 19.2-375, except that the Commissioner shall serve the written notice of the seizure upon the registered owner and lienor in accordance with the requirements of § 8.01-296. Any seizure shall be stayed until conviction and the exhaustion of all appeals at which time, if the information has been filed, the Commonwealth shall immediately commence seizure of the property in accordance with § 19.2-386.2.

An immediate family member of the owner of any motor vehicle for which an information has been filed under this section who was not the driver at the time of the violation may petition the court in which such information was filed for the release of the motor vehicle. If the immediate family member proves by a preponderance of the evidence that his immediate family has only one motor vehicle and will suffer a substantial hardship if that motor vehicle is seized and forfeited, the court, in its discretion, may release the vehicle.

In the event the vehicle was sold to a bona fide purchaser subsequent to the arrest but prior to seizure in order to avoid seizure and forfeiture, the Commonwealth shall have a right of action against the seller for the proceeds of the sale.

D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of $500 and not more than $1,000 and (ii) sentenced to a mandatory minimum period of confinement of five days.

E. For the purpose of determining the number of offenses committed by, and the punishment appropriate for, a person under this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

F. Mandatory minimum punishments imposed pursuant to this section shall be cumulative, and mandatory minimum terms of confinement shall be served consecutively. However, in no case shall punishment imposed hereunder exceed the applicable statutory maximum Class 1 misdemeanor term of confinement or fine upon conviction of a first *offense* or *Aggravated Class 1 misdemeanor term of confinement or fine upon conviction of a* second offense, or Class 6 felony term of confinement or fine upon conviction of a third or subsequent offense.

§ 18.2-340.37. Criminal penalties.

A. Any person who violates the provisions of this article or who willfully and knowingly files, or causes to be filed, a false application, report or other document or who willfully and knowingly makes a false statement, or causes a false statement to be made, on any application, report or other document required to be filed with or made to the Department shall be guilty of a Class 1 misdemeanor.

B. Each day in violation shall constitute a separate offense.

C. Any person who converts funds derived from any charitable gaming to his own or another's use, when the amount of funds is less than $200, shall be guilty of petit larceny and, when the amount of funds is $200 or more *but less than $500 shall be guilty of aggravated petit larceny, and when the amount of funds is $500 or more,* shall be guilty of grand larceny. The provisions of this section shall not preclude the applicability of any other provision of the criminal law of the Commonwealth that may apply to any course of conduct that violates this section.

§ 19.2-8. Limitation of prosecutions.

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny *or aggravated petit larceny* may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the

petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the owner or by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the discovery of the offense.

Prosecution of any misdemeanor violation of § 54.1-111 shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of § 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time or times required by law or regulations shall commence within three years next after the commission of the offense, unless a longer period is otherwise prescribed.

Prosecution of violations of subsection A or B of § 3.2-6570 shall commence within five years of the commission of the offense, except violations regarding agricultural animals shall commence within one year of the commission of the offense.

A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the commission of the offense.

A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2, shall commence within one year of the discovery of the offense but in no case more than three years after the date of the commission of the offense.

A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.) or pursuant to § 18.2-186.3 for identity theft shall be commenced before the earlier of (i) five years after the commission of the last act in the course of conduct constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged by such violation.

Nothing in this section shall be construed to apply to any person fleeing from justice or concealing himself within or without the Commonwealth to avoid arrest or be construed to limit the time within which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or failure to provide for the support and maintenance of a spouse or child.

§ 19.2-81. Arrest without warrant authorized in certain cases.

The following officers shall have the powers of arrest as provided in this section:

1. Members of the State Police force of the Commonwealth;

2. Sheriffs of the various counties and cities, and their deputies;

3. Members of any county police force or any duly constituted police force of any city or town of the Commonwealth;

4. The Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § 28.2-900;

5. Regular conservation police officers appointed pursuant to § 29.1-200;

6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § 29.1-205 to make arrests;

7. The special policemen of the counties as provided by § 15.2-1737, provided such officers are in

uniform, or displaying a badge of office;

8. Conservation officers appointed pursuant to § 10.1-115; and

9. Full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217.

Such officers may arrest, without a warrant, any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence.

Any such officer may arrest without a warrant any person whom the officer has probable cause to suspect of operating a watercraft or motor boat (i) while intoxicated in violation of subsection B of § 29.1-738 or (ii) in violation of an order issued pursuant to § 29.1-738.4, in his presence, and may thereafter transfer custody of the person suspected of the violation to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § 29.1-712 or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest. For purposes of this section, "the scene of any accident" shall include a reasonable location where a vehicle or person involved in an accident has been moved at the direction of a law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public. In addition, such officer may, within three hours of the occurrence of any such accident involving a motor vehicle, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating such motor vehicle while intoxicated in violation of § 18.2-266, 18.2-266.1, 46.2-341.24, or a substantially similar ordinance of any county, city, or town in the Commonwealth.

Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § *18.2-95.1,* 18.2-96 or 18.2-103 or a similar local ordinance, (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv) brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of § 18.2-137, when such property is located on premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting.

§ 19.2-215.1. Functions of a multijurisdiction grand jury.

The functions of a multijurisdiction grand jury are:

1. To investigate any condition that involves or tends to promote criminal violations of:

a. Title 10.1 for which punishment as a felony is authorized;

b. § 13.1-520;

c. §§ 18.2-47 and 18.2-48;

d. *Subsection B of § 18.2-23,* §§ *18.2-95, 18.2-95.1, 18.2-96, 18.2-103, 18.2-105.2, 18.2-108.01,* 18.2-111 and 18.2-112;

e. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2;

f. Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2;

g. Article 1 (§ 18.2-247 et seq.) and Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2;

h. Article 1 (§ 18.2-325 et seq.) and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or otherwise affecting gaming or gambling activity;

i. § 18.2-434, when violations occur before a multijurisdiction grand jury;

j. Article 2 (§ 18.2-438 et seq.) and Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2;

k. § 18.2-460 for which punishment as a felony is authorized;

l. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2;

m. Article 1 (§ 32.1-310 et seq.) of Chapter 9 of Title 32.1;

n. Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1;

o. Article 9 (§ 3.2-6570 et seq.) of Chapter 27.4 of Title 3.1;

p. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

q. Article 2.1 (§ 18.2-46.1 et seq.) and Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2;

r. Article 5 (§ 18.2-186 et seq.) and Article 6 (§ 18.2-191 et seq.) of Chapter 6 of Title 18.2; and

s. Any other provision of law when such condition is discovered in the course of an investigation that a multijurisdiction grand jury is otherwise authorized to undertake and to investigate any condition that involves or tends to promote any attempt, solicitation or conspiracy to violate the laws enumerated in this section.

2. To report evidence of any criminal offense enumerated in subdivision 1 to the attorney for the Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or investigated and, when appropriate, to the Attorney General.

3. To consider bills of indictment prepared by a special counsel to determine whether there is sufficient probable cause to return each such indictment as a "true bill." Only bills of indictment which allege an offense enumerated in subdivision 1 may be submitted to a multijurisdiction grand jury.

4. The provisions of this section shall not abrogate the authority of an attorney for the Commonwealth in a particular jurisdiction to determine the course of a prosecution in that jurisdiction.

§ 19.2-270.1. Use of photographs as evidence in certain larceny and burglary prosecutions.

In any prosecution for larceny under the provisions of ~~§~~§ 18.2-95, *18.2-95.1,*18.2-96 or ~~§~~ 18.2-98, or for shoplifting under the provisions of § 18.2-103, or for burglary under the provisions of §§ 18.2-89, 18.2-90, 18.2-91 or § 18.2-92, photographs of the goods, merchandise, money or securities alleged to have been taken or converted shall be deemed competent evidence of such goods, merchandise, money or securities and shall be admissible in any proceeding, hearing or trial of the case to the same extent as if such goods, merchandise, money or securities had been introduced as evidence. Such photographs shall bear a written description of the goods, merchandise, money or securities alleged to have been taken or converted, the name of the owner of such goods, merchandise, money or securities and the manner of the identification of same by such owner, or the name of the place wherein the alleged offense occurred, the name of the accused, the name of the arresting or investigating police officer or conservator of the peace, the date of the photograph and the name of the photographer. Such writing shall be made under oath by the arresting or investigating police officer or conservator of the peace, and the photographs identified by the signature of the photographer. Upon the filing of such photograph and writing with the police authority or court holding such goods and merchandise as evidence, such goods or merchandise shall be returned to their owner, or the proprietor or manager of the store or establishment wherein the alleged offense occurred.

§ 19.2-289. Conviction of petit larceny.

In a prosecution for grand larceny, if it ~~be~~ *is* found that the thing stolen *has a value of $200 or more but less than $500, the jury may find the accused guilty of aggravated petit larceny, and if it is found that the thing stolen* is of less value than $200, the jury may find the accused guilty of petit larceny.

§ 19.2-290. Conviction of petit larceny though thing stolen worth more than $200.

In a prosecution for petit larceny, though the thing stolen be of the value of $200 or more, the jury may find the accused guilty; and upon a conviction under this section or § 19.2-289 the accused shall be sentenced for petit larceny. *In a prosecution for aggravated petit larceny, though the thing stolen is of the value of $500 or more, the jury may find the accused guilty; and upon a conviction under this section or § 19.2-289 the accused shall be sentenced for aggravated petit larceny.*

§ 19.2-299.2. Alcohol and substance abuse screening and assessment for designated Class 1 misdemeanor convictions.

A. When a person is convicted of any offense committed on or after January 1, 2000, under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2, and such offense is punishable as a Class 1 misdemeanor, or when a person is convicted for a second offense of petit larceny *or aggravated petit larceny or any combination thereof,* the court shall order the person to undergo a substance abuse screening as part of the sentence if the defendant's sentence includes probation supervision by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 or participation in a local alcohol safety action program. Whenever a court requires a person to enter into and successfully complete an alcohol safety action program pursuant to § 18.2-271.1 for a second offense of the type described therein, or orders an evaluation of a person to be conducted by an alcohol safety action program pursuant to any provision of § 46.2-391, the alcohol safety action program shall assess such person's degree of alcohol abuse before determining the appropriate level of treatment to be provided or to be recommended for such person being evaluated pursuant to § 46.2-391.

The court may order such screening upon conviction as part of the sentence of any other Class 1 misdemeanor if the defendant's sentence includes probation supervision by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, participation in a local alcohol safety action program or any other sanction and the court has reason to

believe the defendant has a substance abuse or dependence problem.

B. A substance abuse screening ordered pursuant to this section shall be conducted by the local alcohol safety action program. When an offender is ordered to enter local community-based probation services established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, rather than the local alcohol safety action program, the local community-based probation services agency shall be responsible for the screening. However, if a local community-based probation services agency has not been established for the locality, the local alcohol safety action program shall conduct the screening as part of the sentence.

C. If the screening indicates that the person has a substance abuse or dependence problem, an assessment shall be completed and if the assessment confirms that the person has a substance abuse or dependence problem, as a condition of a suspended sentence and probation, the court shall order the person to complete the substance abuse education and intervention component, or both as appropriate, of the local alcohol safety action program or such other agency providing treatment programs or services, if available, such as in the opinion of the court would be best suited to the needs of the person. If the referral is to the local alcohol safety action program, the program may charge a fee for the education and intervention component, or both, not to exceed $300, based upon the defendant's ability to pay.

§ 32.1-321.4. False statement or representation in applications for eligibility or for use in determining rights to benefits; concealment of facts; criminal penalty.

A. Any person who engages in the following activities, on behalf of himself or another, shall be guilty of larceny and, in addition to the penalties provided in §§ 18.2-95*, 18.2-95.1* and 18.2-96 as applicable, may be fined an amount not to exceed $10,000:

1. Knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact in an application for eligibility, benefits or payments under medical assistance;

2. Knowingly and willfully falsifying, concealing or covering up by any trick, scheme, or device a material fact in connection with an application for eligibility, benefits or payments;

3. Knowingly and willfully concealing or failing to disclose any event affecting the initial or continued right of any individual to any benefits or payment with an intent to secure fraudulently such benefits or payment in a greater amount or quantity than is authorized or when no such benefit or payment is authorized;

4. Knowingly and willfully converting any benefits or payment received pursuant to an application for another person and receipt of benefits or payment on behalf of such other person to use other than for the health and welfare of the other person; or

5. Knowingly and willfully failing to notify the local department of social services, through whom medical assistance benefits were obtained, of changes in the circumstances of any recipient or applicant which could result in the reduction or termination of medical assistance services.

B. It shall be the duty of the Director of Medical Assistance Services or his designee to enforce the provisions of this section. A warrant or summons may be issued for violations of which the Director or his designee has knowledge. Trial for violation of this section shall be held in the county or city in which the application for medical assistance was made or obtained.

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.

A. In addition to any other penalty provided by this section, any motor vehicle administratively impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be impounded or immobilized for an additional period of up to 90 days upon conviction of an offender for driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for (i) a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction or (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2. However, if, at the time of the violation, the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the offender prior to the release of his motor vehicle.

B. Except as provided in §§ 46.2-304 and 46.2-357, no resident or nonresident (i) whose driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who has been directed not to drive by any court or by the Commissioner, or (iii) who has been forbidden, as prescribed by operation of any statute of the Commonwealth or a substantially similar ordinance of any county, city or town, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the period of such suspension or revocation has terminated or the privilege has been reinstated. A clerk's notice of suspension of license for failure to pay fines or costs given in accordance with § 46.2-395 shall be sufficient notice for the purpose of maintaining a conviction under this section. For the purposes of

this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.

C. A violation of subsection B is a Class 1 misdemeanor. A third or subsequent offense occurring within a 10-year period *is an Aggravated Class 1 misdemeanor and* shall include a mandatory minimum term of confinement in jail of 10 days. However, the court shall not be required to impose a mandatory minimum term of confinement in any case where a motor vehicle is operated in violation of this section in a situation of apparent extreme emergency which requires such operation to save life or limb.

D. Upon a violation of subsection B, the court shall suspend the person's license or privilege to drive a motor vehicle for the same period for which it had been previously suspended or revoked. In the event the person violated subsection B by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for an additional period not to exceed 90 days, to commence upon the expiration of the previous suspension or revocation or to commence immediately if the previous suspension or revocation has expired.

E. Any person who operates a motor vehicle or any self-propelled machinery or equipment in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1 is not guilty of a violation of this section but is guilty of a violation of § 18.2-272.

§ 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense; prior conviction.

Any person violating any provision of subsection A of § 46.2-341.24 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense committed within less than five years after a first offense under subsection A of § 46.2-341.24 shall be ~~punishable~~ *guilty of an Aggravated Class 1 misdemeanor and punished* by a fine of not less than $200 nor more than $2,500 and by confinement in jail for not less than one month nor more than ~~one year~~ *24 months*. Five days of such confinement shall be a mandatory minimum sentence. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under subsection A of § 46.2-341.24 shall be ~~punishable~~ *guilty of an Aggravated Class 1 misdemeanor and punished* by a fine of not less than $200 nor more than $2,500 and by confinement in jail for not less than one month nor more than ~~one year~~ *24 months*. Any person convicted of a third offense or subsequent offense committed within 10 years of an offense under subsection A of § 46.2-341.24 shall be ~~punishable~~ *guilty of an Aggravated Class 1 misdemeanor and punished* by a fine of not less than $500 nor more than $2,500 and by confinement in jail for not less than two months nor more than ~~one year~~ *24 months*. Thirty days of such confinement shall be a mandatory minimum sentence if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory minimum sentence if the third or subsequent offense occurs within a period of five to 10 years of a first offense.

For the purposes of this section a conviction or finding of not innocent in the case of a juvenile under (i) § 18.2-51.4 or § 18.2-266, (ii) the ordinance of any county, city or town in this Commonwealth substantially similar to the provisions of § 18.2-51.4 or § 18.2-266, (iii) subsection A of § 46.2-341.24, or (iv) the laws of any other state substantially similar to the provisions of §§ 18.2-51.4, 18.2-266 or subsection A of § 46.2-341.24, shall be considered a prior conviction.

§ 46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.

A. It shall be unlawful for any person determined or adjudicated an habitual offender to drive any motor vehicle or self-propelled machinery or equipment on the highways of the Commonwealth while the revocation of the person's driving privilege remains in effect. However, the revocation determination shall not prohibit the person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

B. Except as provided in subsection D, any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle or self-propelled machinery or equipment in the Commonwealth while the revocation determination is in effect, shall be punished as follows:

1. If such driving does not of itself endanger the life, limb, or property of another, such person shall be guilty of ~~a~~ *an Aggravated* Class 1 misdemeanor punishable by a mandatory minimum term of confinement in jail of 10 days except in cases wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended.

2. If such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24, irrespective of whether the driving of itself endangers the life, limb or property of another and the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24, such person shall be

guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years, one year of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12 months. However, in cases wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended. For the purposes of this section, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of law herein shall be considered an offense in violation of such provision of law.

3. If the offense of driving while a determination as an habitual offender is in effect is a second or subsequent such offense, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

C. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle or self-propelled machinery or equipment while his license, permit, or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person has been determined an habitual offender and, by reason of this determination, is barred from driving a motor vehicle or self-propelled machinery or equipment on the highways in the Commonwealth. If the court determines the accused has been determined to be an habitual offender and finds there is probable cause that the alleged offense under this section is a felony, it shall certify the case to the circuit court of its jurisdiction for trial.

D. Notwithstanding the provisions of subdivisions 2 and 3 of subsection B, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

§ 63.2-525. Payment by Department for legal services.

Notwithstanding any provision of §§ 2.2-2814, 2.2-2815, 2.2-2816, 2.2-2823, 2.2-2824, 2.2-2825 or § 2.2-2826 to the contrary, whenever there shall be authorized by law an assistant attorney for the Commonwealth and such assistant's duties consist of the prosecution of public assistance fraud cases pursuant to §§ 18.2-95, *18.2-95.1*, 18.2-96, 63.2-502, 63.2-513, 63.2-522, 63.2-523 or § 63.2-524, the Department may, with the consent of the attorney for the Commonwealth of the jurisdiction, contract with the county or city or combination thereof for whom such assistant attorney for the Commonwealth is authorized regarding the duties of such assistant and regarding the payment by the Department of the entire salary, expenses, including secretarial services, and allowances of such assistant, as shall be approved by the Compensation Board, for the entire time devoted to these duties. Any such contract may provide that the county, city, or combination thereof shall pay the entire amount of such salary, expenses, and allowances and that the Department shall reimburse such county or city therefor. The amount of such salary, expenses, and allowances shall be set by the Compensation Board as provided by law.

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 $0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.