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## HOUSE BILL NO. 2269

Offered January 16, 2013

*A BILL to amend and reenact §§ 18.2-12.1, 18.2-53.1, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.4, 46.2-391, and 53.1-203 of the Code of Virginia, relating to mandatory minimum sentences to be served consecutively; penalty.*

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Patron—Bell, Robert B.

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Referred to Committee for Courts of Justice

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

**1. That §§ 18.2-12.1, 18.2-53.1, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.4, 46.2-391, and 53.1-203 of the Code of Virginia are amended and reenacted as follows:**

**§ 18.2-12.1. Mandatory minimum punishment; definition.**

"Mandatory minimum" wherever it appears in this Code means, for purposes of imposing punishment upon a person convicted of a crime, that the court shall impose the entire term of confinement, the full amount of the fine, and the complete requirement of community service prescribed by law. The court shall not suspend in full or in part any punishment described as mandatory minimum punishment, and any term of confinement imposed shall be served consecutively with any other sentence.

**§ 18.2-53.1. Use or display of firearm in committing felony.**

It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2, robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in § 18.2-51.2, malicious wounding by mob as defined in § 18.2-41 or abduction. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a mandatory minimum term of imprisonment of three years for a first conviction, and to a mandatory minimum term of five years for a second or subsequent conviction under the provisions of this section. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

**§ 18.2-248. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance prohibited; penalties.**

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.

B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. Except as provided in subsection C1, any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than 40 years and fined not more than \$500,000. Upon a second conviction of such a violation, and it is alleged in the warrant, indictment, or information that the person has been before convicted of such an offense or of a substantially similar offense in any other jurisdiction, which offense would be a felony if committed in the Commonwealth, and such prior conviction occurred before the date of the offense alleged in the warrant, indictment, or information, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence, and he shall be fined not more than \$500,000.

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses

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59 or of substantially similar offenses in any other jurisdiction which offenses would be felonies if  
60 committed in the Commonwealth and such prior convictions occurred before the date of the offense  
61 alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a  
62 period of not less than 10 years, 10 years of which shall be a mandatory minimum term of  
63 imprisonment ~~to be served consecutively with any other sentence~~, and he shall be fined not more than  
64 \$500,000.

65 Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture,  
66 sell, give, or distribute the following is guilty of a felony punishable by a fine of not more than \$1  
67 million and imprisonment for five years to life, five years of which shall be a mandatory minimum term  
68 of imprisonment ~~to be served consecutively with any other sentence~~:

- 69 1. 100 grams or more of a mixture or substance containing a detectable amount of heroin;  
70 2. 500 grams or more of a mixture or substance containing a detectable amount of:  
71 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and  
72 derivatives of ecgonine or their salts have been removed;  
73 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;  
74 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or  
75 d. Any compound, mixture, or preparation that contains any quantity of any of the substances  
76 referred to in subdivisions 2a through 2c;  
77 3. 250 grams or more of a mixture or substance described in subdivisions 2a through 2d that contain  
78 cocaine base; or  
79 4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or  
80 more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers,  
81 or salts of its isomers.

82 The mandatory minimum term of imprisonment to be imposed for a violation of this subsection shall  
83 not be applicable if the court finds that:

- 84 a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;  
85 b. The person did not use violence or credible threats of violence or possess a firearm or other  
86 dangerous weapon in connection with the offense or induce another participant in the offense to do so;  
87 c. The offense did not result in death or serious bodily injury to any person;  
88 d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was  
89 not engaged in a continuing criminal enterprise as defined in subsection I; and  
90 e. Not later than the time of the sentencing hearing, the person has truthfully provided to the  
91 Commonwealth all information and evidence the person has concerning the offense or offenses that were  
92 part of the same course of conduct or of a common scheme or plan, but the fact that the person has no  
93 relevant or useful other information to provide or that the Commonwealth already is aware of the  
94 information shall not preclude a determination by the court that the defendant has complied with this  
95 requirement.

96 C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its  
97 salts, isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a  
98 detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction,  
99 be imprisoned for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a  
100 second conviction of such a violation, any such person may, in the discretion of the court or jury  
101 imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years,  
102 and be fined not more than \$500,000. When a person is convicted of a third or subsequent offense  
103 under this subsection and it is alleged in the warrant, indictment, or information that he has been  
104 previously convicted of two or more such offenses or of substantially similar offenses in any other  
105 jurisdiction, which offenses would be felonies if committed in the Commonwealth and such prior  
106 convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he  
107 shall be sentenced to imprisonment for life or for a period not less than 10 years, three years of which  
108 shall be a mandatory minimum term of imprisonment ~~to be served consecutively with any other~~  
109 ~~sentence~~, and he shall be fined not more than \$500,000. Upon conviction, in addition to any other  
110 punishment, a person found guilty of this offense shall be ordered by the court to make restitution, as  
111 the court deems appropriate, to any innocent property owner whose property is damaged, destroyed, or  
112 otherwise rendered unusable as a result of such methamphetamine production. This restitution shall  
113 include the person's or his estate's estimated or actual expenses associated with cleanup, removal, or  
114 repair of the affected property. If the property that is damaged, destroyed, or otherwise rendered  
115 unusable as a result of such methamphetamine production is property owned in whole or in part by the  
116 person convicted, the court shall order the person to pay to the Methamphetamine Cleanup Fund  
117 authorized in § 18.2-248.04 the reasonable estimated or actual expenses associated with cleanup,  
118 removal, or repair of the affected property or, if actual or estimated expenses cannot be determined, the  
119 sum of \$10,000.

120 D. If such person proves that he gave, distributed or possessed with intent to give or distribute a

controlled substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he ~~shall be~~ is guilty of a Class 5 felony.

E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharmacist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

E1. Any person who violates this section with respect to a controlled substance classified in Schedule III except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, ~~shall be~~ is guilty of a Class 5 felony.

E2. Any person who violates this section with respect to a controlled substance classified in Schedule IV ~~shall be~~ is guilty of a Class 6 felony.

E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute a controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with the intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, is guilty of a Class 1 misdemeanor.

F. Any person who violates this section with respect to a controlled substance classified in Schedule V or Schedule VI or an imitation controlled substance which imitates a controlled substance classified in Schedule V or Schedule VI, ~~shall be~~ is guilty of a Class 1 misdemeanor.

G. Any person who violates this section with respect to an imitation controlled substance which imitates a controlled substance classified in Schedule I, II, III, or IV ~~shall be~~ is guilty of a Class 6 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this subsection that the defendant believed the imitation controlled substance to actually be a controlled substance.

H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give or distribute the following:

1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;
2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:
  - a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
  - b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
  - c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
  - d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;
3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine base;

4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers ~~shall be~~ is guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence. Such mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so; (iii) the offense did not result in death or serious bodily injury to any person; (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section; and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but

182 the fact that the person has no relevant or useful other information to provide or that the Commonwealth  
183 already is aware of the information shall not preclude a determination by the court that the defendant  
184 has complied with this requirement.

185 H1. Any person who was the principal or one of several principal administrators, organizers or  
186 leaders of a continuing criminal enterprise ~~shall be~~ is guilty of a felony if (i) the enterprise received at  
187 least \$100,000 but less than \$250,000 in gross receipts during any 12-month period of its existence from  
188 the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or  
189 the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the  
190 enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or  
191 distribute the following during any 12-month period of its existence:

192 1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a  
193 detectable amount of heroin;

194 2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable  
195 amount of:

196 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and  
197 derivatives of ecgonine or their salts have been removed;

198 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

199 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

200 d. Any compound, mixture, or preparation which contains any quantity of any of the substances  
201 referred to in subdivisions a through c;

202 3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in  
203 subdivision 2 which contains cocaine base;

204 4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a  
205 detectable amount of marijuana; or

206 5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its  
207 isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a  
208 detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

209 A conviction under this section shall be punishable by a fine of not more than \$1 million and  
210 imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence.

211 H2. Any person who was the principal or one of several principal administrators, organizers or  
212 leaders of a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross  
213 receipts during any 12-month period of its existence from the manufacture, importation, or distribution  
214 of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of  
215 isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give,  
216 distribute or possess with the intent to manufacture, sell, give or distribute the following during any  
217 12-month period of its existence:

218 1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

219 2. At least 10 kilograms of a mixture or substance containing a detectable amount of:

220 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and  
221 derivatives of ecgonine or their salts have been removed;

222 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

223 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

224 d. Any compound, mixture, or preparation which contains any quantity of any of the substances  
225 referred to in subdivisions a through c;

226 3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine  
227 base;

228 4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

229 5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0  
230 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts,

231 isomers, or salts of its isomers ~~shall be~~ is guilty of a felony punishable by a fine of not more than \$1  
232 million and imprisonment for life, which shall be served with no suspension in whole or in part. Such  
233 punishment shall be made to run consecutively with any other sentence. However, the court may impose  
234 a mandatory minimum sentence of 40 years if the court finds that the defendant substantially cooperated  
235 with law-enforcement authorities.

236 I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he  
237 violates any provision of this section, the punishment for which is a felony and either (ii) such violation  
238 is a part of a continuing series of violations of this section which are undertaken by such person in  
239 concert with five or more other persons with respect to whom such person occupies a position of  
240 organizer, a supervisory position, or any other position of management, and from which such person  
241 obtains substantial income or resources or (iii) such violation is committed, with respect to  
242 methamphetamine or other controlled substance classified in Schedule I or II, for the benefit of, at the  
243 direction of, or in association with any criminal street gang as defined in § 18.2-46.1.

J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any two or more different substances listed below with the intent to manufacture methamphetamine, methcathinone or amphetamine is guilty of a Class 6 felony: liquified ammonia gas, ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium metal, sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or 2-propanone.

K. The term "methamphetamine precursor drug," when used in this article, means a drug or product containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or salts of optical isomers.

**§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.**

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) it is unlawful for any person to transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance or five or more pounds of marijuana. A violation of this section shall constitute a separate and distinct felony. Upon conviction, the person shall be sentenced to not less than five years nor more than 40 years imprisonment, three years of which shall be a mandatory minimum term of imprisonment, and a fine not to exceed \$1,000,000. A second or subsequent conviction hereunder shall be punishable by a mandatory minimum term of imprisonment of 10 years; ~~which shall be served consecutively with any other sentence.~~

**§ 18.2-248.03. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine; penalty.**

A. Notwithstanding any other provision of law, any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute 28 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a felony punishable by a fine of not more than \$500,000 and imprisonment for not less than five nor more than 40 years, three years of which shall be a mandatory minimum term of imprisonment ~~to be served consecutively with any other sentence.~~

B. Notwithstanding any other provision of law, any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute 227 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for not less than five years nor more than life, five years of which shall be a mandatory minimum term of imprisonment ~~to be served consecutively with any other sentence.~~

**§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.**

Except as authorized in the Drug Control Act, Chapter 34 of Title 54.1, it shall be unlawful for any person to sell, give, distribute or possess with intent to sell, give or distribute marijuana.

(a) Any person who violates this section with respect to:

(1) Not more than one-half ounce of marijuana is guilty of a Class 1 misdemeanor;

(2) More than one-half ounce but not more than five pounds of marijuana is guilty of a Class 5 felony;

(3) More than five pounds of marijuana is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years.

If such person proves that he gave, distributed or possessed with intent to give or distribute marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or dependent upon such marijuana, he ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

(b) Any person who gives, distributes or possesses marijuana as an accommodation and not with intent to profit thereby, to an inmate of a state or local correctional facility as defined in § 53.1-1, or in the custody of an employee thereof ~~shall be~~ *is* guilty of a Class 4 felony.

(c) Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, not for his own use is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years and a fine not to exceed \$10,000.

(d) When a person is convicted of a third or subsequent felony offense under this section and it is alleged in the warrant, indictment or information that he has been before convicted of two or more felony offenses under this section or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred

before the date of the offense alleged in the warrant, indictment or information, he shall be sentenced to imprisonment for life or for any period not less than five years, five years of which shall be a mandatory minimum term of imprisonment ~~to be served consecutively with any other sentence~~, and he shall be fined not more than \$500,000.

**§ 18.2-248.5. Illegal stimulants and steroids; penalty.**

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), Chapter 34 of Title 54.1, it shall be unlawful for any person to knowingly manufacture, sell, give, distribute or possess with intent to manufacture, sell, give or distribute any anabolic steroid.

A violation of subsection A shall be punishable by a term of imprisonment of not less than one year nor more than 10 years or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months or a fine of not more than \$20,000, either or both. Any person violating the provisions of this subsection shall, upon conviction, be incarcerated for a mandatory minimum term of six months ~~to be served consecutively with any other sentence~~.

B. It shall be unlawful for any person to knowingly sell or otherwise distribute, without prescription, to a minor any pill, capsule or tablet containing any combination of caffeine and ephedrine sulfate.

A violation of this subsection B shall be punishable as a Class 1 misdemeanor.

**§ 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties; penalty.**

A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance, marijuana or synthetic cannabinoids while:

1. Upon the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education, or any clearly marked licensed child day center as defined in § 63.2-100;

2. Upon public property or any property open to public use within 1,000 feet of the property described in subdivision 1;

3. On any school bus as defined in § 46.2-100;

4. Upon a designated school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity;

5. Upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility or any public library; or

6. Upon the property of any state facility as defined in § 37.2-100 or upon public property or property open to public use within 1,000 feet of such an institution. It is a violation of the provisions of this section if the person possessed the controlled substance, imitation controlled substance, marijuana or synthetic cannabinoids on the property described in subdivisions 1 through 6, regardless of where the person intended to sell, give or distribute the controlled substance, imitation controlled substance, marijuana, or synthetic cannabinoids. Nothing in this section shall prohibit the authorized distribution of controlled substances.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than \$100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control Act (§ 54.1-3400 et seq.) or synthetic cannabinoids or more than one-half ounce of marijuana shall be punished by a mandatory minimum term of imprisonment of one year ~~to be served consecutively with any other sentence~~. However, if such person proves that he sold such controlled substance, marijuana, or synthetic cannabinoids only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance, marijuana, or synthetic cannabinoids to use or become addicted to or dependent upon such controlled substance, marijuana, or synthetic cannabinoids, he ~~shall be~~ is guilty of a Class 1 misdemeanor.

C. If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby.

**§ 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 is 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 or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) 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, (ii) 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 punished by a mandatory minimum fine of \$500 and by confinement in jail for not less than one month nor more than one year. 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 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 or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) 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, (ii) 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 § 19.2-386.34.

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 pursuant to this section~~ exceed the applicable statutory maximum Class 1 misdemeanor term of confinement or fine upon conviction of a first or second offense, or Class 6 felony term of confinement or fine upon conviction of a third or subsequent offense.

**§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited.**

A. If any person possesses any (i) stun weapon as defined in this section; (ii) knife, except a pocket knife having a folding metal blade of less than three inches; or (iii) weapon, including a weapon of like kind, designated in subsection A of § 18.2-308, other than a firearm; upon (a) the property of any public, private or religious elementary, middle or high school, including buildings and grounds; (b) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (c) any school bus owned or operated by any such school, he ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

B. If any person possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) any public, private or religious

428 elementary, middle or high school, including buildings and grounds; (ii) that portion of any property  
429 open to the public and then exclusively used for school-sponsored functions or extracurricular activities  
430 while such functions or activities are taking place; or (iii) any school bus owned or operated by any  
431 such school, he ~~shall be~~ *is* guilty of a Class 6 felony.

432 C. If any person possesses any firearm designed or intended to expel a projectile by action of an  
433 explosion of a combustible material within a public, private or religious elementary, middle or high  
434 school building and intends to use, or attempts to use, such firearm, or displays such weapon in a  
435 threatening manner, such person ~~shall be~~ *is* guilty of a Class 6 felony and *shall be* sentenced to a  
436 mandatory minimum term of imprisonment of five years ~~to be served consecutively with any other~~  
437 sentence.

438 The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section.  
439 The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a  
440 part of the school's curriculum or activities; (ii) a person possessing a knife customarily used for food  
441 preparation or service and using it for such purpose; (iii) persons who possess such weapon or weapons  
442 as a part of any program sponsored or facilitated by either the school or any organization authorized by  
443 the school to conduct its programs either on or off the school premises; (iv) any law-enforcement  
444 officer; (v) any person who possesses a knife or blade which he uses customarily in his trade; (vi) a  
445 person who possesses an unloaded firearm that is in a closed container, or a knife having a metal blade,  
446 in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor  
447 vehicle; or (vii) a person who has a valid concealed handgun permit and possesses a concealed handgun  
448 while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to  
449 the school. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three  
450 inches or longer and "closed container" includes a locked vehicle trunk.

451 As used in this section:

452 "Stun weapon" means any device that emits a momentary or pulsed output, which is electrical,  
453 audible, optical or electromagnetic in nature and which is designed to temporarily incapacitate a person.

454 **§ 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons,**  
455 **explosives or concealed weapons by convicted felons; penalties; petition for permit; when issued.**

456 A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person  
457 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in  
458 violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or  
459 presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person  
460 under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of  
461 the offense of a delinquent act which would be a felony if committed by an adult, other than those  
462 felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the  
463 Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof,  
464 to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun  
465 weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry  
466 about his person, hidden from common observation, any weapon described in subsection A of  
467 § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as  
468 defined by § 18.2-308.1. Any person who violates this section ~~shall be~~ *is* guilty of a Class 6 felony.  
469 However, any person who violates this section by knowingly and intentionally possessing or transporting  
470 any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be  
471 sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this  
472 section by knowingly and intentionally possessing or transporting any firearm and who was previously  
473 convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum  
474 term of imprisonment of two years. ~~The mandatory minimum terms of imprisonment prescribed for~~  
475 ~~violations of this section shall be served consecutively with any other sentence.~~

476 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm,  
477 ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member  
478 of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii)  
479 any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned  
480 or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution  
481 of Virginia provided the Governor, in the document granting the pardon or removing the person's  
482 political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship,  
483 transport, possess or receive firearms.

484 C. Any person prohibited from possessing, transporting or carrying a firearm or stun weapon under  
485 subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to  
486 possess or carry a firearm or stun weapon; however, no person who has been convicted of a felony shall  
487 be qualified to petition for such a permit unless his civil rights have been restored by the Governor or  
488 other appropriate authority. A copy of the petition shall be mailed or delivered to the attorney for the  
489 Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and



represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section relating to firearms, ammunition for a firearm, and stun weapons shall not apply to any person who has been granted a permit pursuant to this subsection.

C1. Any person who was prohibited from possessing, transporting or carrying explosive material under subsection A may possess, transport or carry such explosive material if his right to possess, transport or carry explosive material has been restored pursuant to federal law.

D. For the purpose of this section:

"Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant designed for use in a firearm other than an antique firearm as defined in § 18.2-308.2:2.

"Explosive material" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and detonating cord but shall not include fireworks or permissible fireworks as defined in § 27-95.

**§ 18.2-308.4. Possession of firearms while in possession of certain substances.**

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.

B. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of two years. ~~Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.~~

C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.), synthetic cannabinoids or more than one pound of marijuana. A violation of this subsection is a Class 6 felony, and constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of five years. ~~Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.~~

**§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception; petition for restoration of privilege.**

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of drugs or intoxicants), if the subsequent violation occurred within 10 years of the prior violation, or (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within 10 years of the prior offense. However, if the Commissioner has received a copy of a court order authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. For the purposes of this subsection, 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 Virginia law herein shall be considered an offense in violation of such provision of Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so unless the requirement for completion of the program has been waived by the court for good cause shown. A conviction includes a finding of not innocent in the case of a juvenile.

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1 or § 18.2-51.4 or (ii) convicted of three offenses arising out of separate incidents or occurrences within a period of 10 years in violation of the provisions of subsection A of § 46.2-341.24 or § 18.2-266, or a substantially similar ordinance or law of any other jurisdiction, or any combination of three such offenses. A conviction includes a finding of not innocent in the case of a juvenile.

C. Any person who has had his driver's license revoked in accordance with subsection B of this section may petition the circuit court of his residence, or, if a nonresident of Virginia, any circuit court:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of his last conviction. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a period of at least six months, and upon whatever other conditions the court may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

2. For a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment after the expiration of three years from the date of his last conviction. The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court shall prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

The ignition interlock system installation requirement under subdivisions 1 and 2 of this subsection need only be satisfied once as to any single revocation under subsection B of this section for any person seeking restoration under subdivision 1 following the granting of a restricted license under subdivision 1 or 2.

D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted license issued pursuant to subsection C shall, provided such revocation was based on at least one conviction for an offense committed after July 1, 1999, 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 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. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar law or ordinance of another jurisdiction, 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, subsection A of § 46.2-341.24, or a substantially similar local ordinance, or law of another jurisdiction, 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 and no portion of such sentence shall be suspended or run concurrently with any other sentence.

b. 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.

3. If any such offense of driving is a second or subsequent violation, 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.

E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, 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.

F. Any period of driver's license revocation imposed pursuant to this section shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

G. Nothing in this section shall prohibit a 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 such tract of land when the distance between the tracts is no more than five miles.

H. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B, or (ii) in violation of the terms of a restricted license issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be guilty of a violation of § 18.2-272.

**§ 53.1-203. Felonies by prisoners; penalties.**

It shall be unlawful for a prisoner in a state, local or community correctional facility or in the custody of an employee thereof to:

1. Escape from a correctional facility or from any person in charge of such prisoner;
2. Willfully break, cut or damage any building, furniture, fixture or fastening of such facility or any part thereof for the purpose of escaping, aiding any other prisoner to escape therefrom or rendering such facility less secure as a place of confinement;
3. Make, procure, secrete or have in his possession any instrument, tool or other thing for the purpose of escaping from or aiding another to escape from a correctional facility or employee thereof;
4. Make, procure, secrete or have in his possession a knife, instrument, tool or other thing not authorized by the superintendent or sheriff which is capable of causing death or bodily injury;
5. Procure, sell, secrete or have in his possession any chemical compound which he has not lawfully received;
6. Procure, sell, secrete or have in his possession a controlled substance classified in Schedule III of the Drug Control Act (§ 54.1-3400 et seq.), marijuana, or synthetic cannabinoids as defined in § 18.2-248.1-1;
7. Introduce into a correctional facility or have in his possession firearms or ammunition for firearms;
8. Willfully burn or destroy by use of any explosive device or substance, in whole or in part, or cause to be so burned or destroyed, any personal property, within any correctional facility;
9. Willfully tamper with, damage, destroy, or disable any fire protection or fire suppression system, equipment, or sprinklers within any correctional facility; or
10. Conspire with another prisoner or other prisoners to commit any of the foregoing acts.

For violation of any of the provisions of this section, except subdivision 6, the prisoner shall be is guilty of a Class 6 felony. For a violation of subdivision 6, he shall be is guilty of a Class 5 felony. If the violation is of subdivision 1 of this section and the escapee is a felon, he shall be sentenced to a mandatory minimum term of confinement of one year, which shall be served consecutively with any other sentence. The prisoner shall, upon conviction of escape, immediately commence to serve such escape sentence, and he shall not be eligible for parole during such period. Any prisoner sentenced to life imprisonment who escapes shall not be eligible for parole. No part of the time served for escape shall be credited for the purpose of parole toward the sentence or sentences, the service of which is interrupted for service of the escape sentence, nor shall it be credited for such purpose toward any other sentence.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$743,967 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.