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SENATE BILL NO. 832
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Governor
 on March 21, 2013)

(Patron Prior to Substitute—Senator Stuart)

A *BILL to amend and reenact §§ 16.1-253.2, 18.2-46.3:3, 18.2-60.4, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-154, 18.2-308.2:2, 18.2-374.1, and 18.2-374.1:1 of the Code of Virginia, relating to mandatory minimum sentences to be served consecutively; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.2, 18.2-46.3:3, 18.2-60.4, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-154, 18.2-308.2:2, 18.2-374.1, and 18.2-374.1:1 of the Code of Virginia are amended and reenacted as follows:

§ 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, or 16.1-279.1 or subsection B of § 20-103, when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor. The punishment for 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 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. *The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.*

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.

§ 18.2-46.3:3. Enhanced punishment for gang activity taking place in a gang-free zone; penalties.

Any person who violates § 18.2-46.2 (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or postsecondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; or (iv) upon the property, including buildings and grounds, of any publicly owned or operated community center or any publicly owned or operated recreation center is guilty of a felony punishable as specified in § 18.2-46.2, and shall be sentenced to a mandatory minimum term of imprisonment of two years *to be served consecutively with any other sentence.* A person who violates subsection A of § 18.2-46.3 upon any property listed in this section is guilty of a Class 6 felony, except that any person 18 years of age or older who violates subsection A of § 18.2-46.3 upon any property listed in this section, when such offense is committed against a juvenile, is guilty of a Class 5 felony. Any person who violates subsection B of § 18.2-46.3 upon any property listed in this section is guilty of a Class 5 felony. It is a violation of this section if the person violated § 18.2-46.2 or 18.2-46.3 on the property described in clauses (i) through (iii) regardless of where the person intended to commit such violation.

§ 18.2-60.4. Violation of protective orders; penalty.

Any person who violates any provision of a protective order issued pursuant to § 19.2-152.8, 19.2-152.9 or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. The punishment for 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 a mandatory

60 minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of
61 violating a protective order, when the offense is committed within 20 years of the first conviction and
62 when either the instant or one of the prior offenses was based on an act or threat of violence, is guilty
63 of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six
64 months. *The mandatory minimum terms of confinement prescribed for violations of this section shall be*
65 *served consecutively with any other sentence.*

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

71 Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is
72 not specified, the person shall be sentenced to a term of confinement and in no case shall the entire
73 term imposed be suspended.

74 Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order
75 pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction.

76 **§ 18.2-61. Rape.**

77 A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse,
78 or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with
79 any other person and such act is accomplished (i) against the complaining witness's will, by force, threat
80 or intimidation of or against the complaining witness or another person; or (ii) through the use of the
81 complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as
82 the victim, he or she shall be guilty of rape.

83 B. A violation of this section shall be punishable, in the discretion of the court or jury, by
84 confinement in a state correctional facility for life or for any term not less than five years; and in
85 addition:

86 1. For a violation of clause (iii) of subsection A where the offender is more than three years older
87 than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of
88 a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89,
89 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of
90 confinement of 25 years; or

91 2. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the
92 offender was 18 years of age or older at the time of the offense, the punishment shall include a
93 mandatory minimum term of confinement for life.

94 *The mandatory minimum terms of confinement prescribed for violations of this section shall be*
95 *served consecutively with any other sentence.* If the term of confinement imposed for any violation of
96 clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a
97 term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended
98 sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the
99 defendant's life, subject to revocation by the court.

100 There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not
101 possess the physical capacity to commit a violation of this section. In any case deemed appropriate by
102 the court, all or part of any sentence imposed for a violation under this section against a spouse may be
103 suspended upon the defendant's completion of counseling or therapy, if not already provided, in the
104 manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and
105 such other evidence as may be relevant, the court finds such action will promote maintenance of the
106 family unit and will be in the best interest of the complaining witness.

107 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case
108 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the
109 defendant who has not previously had a proceeding against him for violation of this section dismissed
110 pursuant to this subsection and with the consent of the complaining witness and the attorney for the
111 Commonwealth, may defer further proceedings and place the defendant on probation pending completion
112 of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the
113 defendant fails to so complete such counseling or therapy, the court may make final disposition of the
114 case and proceed as otherwise provided. If such counseling is completed as prescribed under
115 § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after
116 consideration of the views of the complaining witness and such other evidence as may be relevant, the
117 court finds such action will promote maintenance of the family unit and be in the best interest of the
118 complaining witness.

119 **§ 18.2-67.1. Forcible sodomy.**

120 A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio,
121 anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a

complaining witness, whether or not his or her spouse, to engage in such acts with any other person, and

1. The complaining witness is less than 13 years of age; or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of subdivision A 1, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-67.2. Object sexual penetration; penalty.

A. An accused shall be guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own body with an object or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person or to penetrate, or to be penetrated by, an animal, and

1. The complaining witness is less than 13 years of age; or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be

183 *served consecutively with any other sentence.* If the term of confinement imposed for any violation of
184 subdivision A 1, where the offender is more than three years older than the victim, is for a term less
185 than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence
186 of no less than 40 years. This suspended sentence shall be suspended for the remainder of the
187 defendant's life, subject to revocation by the court.

188 In any case deemed appropriate by the court, all or part of any sentence imposed for a violation
189 under this section against a spouse may be suspended upon the defendant's completion of counseling or
190 therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of
191 the views of the complaining witness and such other evidence as may be relevant, the court finds such
192 action will promote maintenance of the family unit and will be in the best interest of the complaining
193 witness.

194 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case
195 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the
196 defendant who has not previously had a proceeding against him for violation of this section dismissed
197 pursuant to this subsection and with the consent of the complaining witness and the attorney for the
198 Commonwealth, may defer further proceedings and place the defendant on probation pending completion
199 of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the
200 defendant fails to so complete such counseling or therapy, the court may make final disposition of the
201 case and proceed as otherwise provided. If such counseling is completed as prescribed under
202 § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after
203 consideration of the views of the complaining witness and such other evidence as may be relevant, the
204 court finds such action will promote maintenance of the family unit and be in the best interest of the
205 complaining witness.

206 **§ 18.2-154. Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty.**

207 Any person who maliciously shoots at, or maliciously throws any missile at or against, any train or
208 cars on any railroad or other transportation company or any vessel or other watercraft, or any motor
209 vehicle or other vehicles when occupied by one or more persons, whereby the life of any person on
210 such train, car, vessel, or other watercraft, or in such motor vehicle or other vehicle, may be put in peril,
211 is guilty of a Class 4 felony. In the event of the death of any such person, resulting from such malicious
212 shooting or throwing, the person so offending is guilty of murder in the second degree. However, if the
213 homicide is willful, deliberate and premeditated, he is guilty of murder in the first degree.

214 If any such act is committed unlawfully, but not maliciously, the person so offending is guilty of a
215 Class 6 felony and, in the event of the death of any such person, resulting from such unlawful act, the
216 person so offending is guilty of involuntary manslaughter.

217 If any person commits a violation of this section by maliciously or unlawfully shooting, with a
218 firearm, at a conspicuously marked law-enforcement, fire or rescue squad vehicle, ambulance or any
219 other emergency medical vehicle, the sentence imposed shall include a mandatory minimum term of
220 imprisonment of one year *to be served consecutively with any other sentence.*

221 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**
222 **firearms.**

223 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a
224 form to be provided by the Department of State Police, to have the dealer obtain criminal history record
225 information. Such form shall include only the written consent; the name, birth date, gender, race,
226 citizenship, and social security number and/or any other identification number; the number of firearms
227 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the
228 following questions: (i) has the applicant been convicted of a felony offense or found guilty or
229 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent
230 act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order
231 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,
232 or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant
233 ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a
234 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been
235 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and
236 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any
237 other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to
238 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3
239 or any substantially similar law of any other jurisdiction.

240 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other
241 person who is a resident of Virginia until he has (i) obtained written consent and the other information
242 on the consent form specified in subsection A, and provided the Department of State Police with the
243 name, birth date, gender, race, citizenship, and social security and/or any other identification number and
244 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested

criminal history record information by a telephone call to or other communication authorized by the State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense, and other documentation of residence. Except where the photo-identification was issued by the United States Department of Defense, the other documentation of residence shall show an address identical to that shown on the photo-identification form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; other current identification allowed as evidence of residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 2001-5; or other documentation of residence determined to be acceptable by the Department of Criminal Justice Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the photo-identification was issued by the Department of Defense, permanent orders assigning the purchaser to a duty post in Virginia, including the Pentagon, shall be the only other required documentation of residence. For the purposes of this section and establishment of residency for firearm purchase, residency shall be deemed to be the permanent duty post of a member of the armed forces. When the photo-identification presented to a dealer by the prospective purchaser is a driver's license or other photo-identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo-identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the United States State Department, a certificate of citizenship or a certificate of naturalization issued by the United States Citizenship and Immigration Services, an unexpired U.S. passport, a United States citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other documentation of status as a person lawfully admitted for permanent residence issued by the United States Citizenship and Immigration Services.

Upon receipt of the request for a criminal history record information check, the State Police shall (1) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (2) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (3) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's request, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Behavioral Health and Developmental Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision 1 and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or

306 federal law. However, the log on requests made may be maintained for a period of 12 months, and such
307 log shall consist of the name of the purchaser, the dealer identification number, the unique approval
308 number and the transaction date.

309 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
310 deliver the written consent form required by subsection A to the Department of State Police. The State
311 Police shall immediately initiate a search of all available criminal history record information to
312 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal
313 law. If the search discloses information indicating that the buyer or transferee is so prohibited from
314 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in
315 the jurisdiction where the sale or transfer occurred and the dealer without delay.

316 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
317 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
318 residents of other states under the terms of subsections A and B upon furnishing the dealer with proof
319 of citizenship or status as a person lawfully admitted for permanent residence and one
320 photo-identification form issued by a governmental agency of the person's state of residence and one
321 other form of identification determined to be acceptable by the Department of Criminal Justice Services.

322 6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include
323 December 25.

324 C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the
325 transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of
326 subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the
327 Department of State Police a report indicating that a search of all available criminal history record
328 information has not disclosed that the person is prohibited from possessing or transporting a firearm
329 under state or federal law. The dealer shall obtain the required report by mailing or delivering the
330 written consent form required under subsection A to the State Police within 24 hours of its execution. If
331 the dealer has complied with the provisions of this subsection and has not received the required report
332 from the State Police within 10 days from the date the written consent form was mailed to the
333 Department of State Police, he shall not be deemed in violation of this section for thereafter completing
334 the sale or transfer.

335 D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting
336 or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check
337 through the dealer as provided in subsection C.

338 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
339 exercise his right of access to and review and correction of criminal history record information under
340 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
341 30 days of such denial.

342 F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history
343 record information under false pretenses, or who willfully and intentionally disseminates or seeks to
344 disseminate criminal history record information except as authorized in this section shall be guilty of a
345 Class 2 misdemeanor.

346 G. For purposes of this section:

347 "Actual buyer" means a person who executes the consent form required in subsection B or C, or
348 other such firearm transaction records as may be required by federal law.

349 "Antique firearm" means:

350 1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of
351 ignition system) manufactured in or before 1898;

352 2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not
353 designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire
354 or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that
355 is not readily available in the ordinary channels of commercial trade;

356 3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use
357 black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this
358 subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame
359 or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon
360 that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any
361 combination thereof; or

362 4. Any curio or relic as defined in this subsection.

363 "Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple
364 projectiles by action of an explosion of a combustible material and is equipped at the time of the
365 offense with a magazine which will hold more than 20 rounds of ammunition or designed by the
366 manufacturer to accommodate a silencer or equipped with a folding stock.

367 "Curios or relics" means firearms that are of special interest to collectors by reason of some quality

other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant to this section.

I. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government, or any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23; or (iii) antique firearms, curios or relics.

J. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another state, in which case the laws and regulations of that state and the United States governing the purchase, trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS) check shall be performed prior to such purchase, trade or transfer of firearms.

J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of \$5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C or on such firearm transaction records as may be required by federal law, shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the performance of his official duties, or other person under his direct supervision.

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 felony. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years *to be served consecutively with any other sentence*.

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of a Class 5 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years *to*

429 *be served consecutively with any other sentence.*

430 O. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating
431 whether the driver's license is an original, duplicate or renewed driver's license.

432 P. [Repealed.]

433 **§ 18.2-374.1. Production, publication, sale, financing, etc., of child pornography; presumption as**
434 **to age; severability.**

435 A. For purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, "child pornography"
436 means sexually explicit visual material which utilizes or has as a subject an identifiable minor. An
437 identifiable minor is a person who was a minor at the time the visual depiction was created, adapted, or
438 modified; or whose image as a minor was used in creating, adapting or modifying the visual depiction;
439 and who is recognizable as an actual person by the person's face, likeness, or other distinguishing
440 characteristic, such as a unique birthmark or other recognizable feature; and shall not be construed to
441 require proof of the actual identity of the identifiable minor.

442 For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term "sexually
443 explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, digital
444 image, including such material stored in a computer's temporary Internet cache when three or more
445 images or streaming videos are present, or similar visual representation which depicts sexual bestiality, a
446 lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or
447 sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains
448 such a visual representation. An undeveloped photograph or similar visual material may be sexually
449 explicit material notwithstanding that processing or other acts may be required to make its sexually
450 explicit content apparent.

451 B. A person shall be guilty of production of child pornography who:

452 1. Accosts, entices or solicits a person less than 18 years of age with intent to induce or force such
453 person to perform in or be a subject of child pornography; or

454 2. Produces or makes or attempts or prepares to produce or make child pornography; or

455 3. Who knowingly takes part in or participates in the filming, photographing, or other production of
456 child pornography by any means; or

457 4. Knowingly finances or attempts or prepares to finance child pornography.

458 5. [Repealed.]

459 B1. [Repealed.]

460 C1. Any person who violates this section, when the subject of the child pornography is a child less
461 than 15 years of age, shall be punished by not less than five years nor more than 30 years in a state
462 correctional facility. However, if the person is at least seven years older than the subject of the child
463 pornography the person shall be punished by a term of imprisonment of not less than five years nor
464 more than 30 years in a state correctional facility, five years of which shall be a mandatory minimum
465 term of imprisonment. Any person who commits a second or subsequent violation of this section where
466 the person is at least seven years older than the subject shall be punished by a term of imprisonment of
467 not less than 15 years nor more than 40 years, 15 years of which shall be a mandatory minimum term
468 of imprisonment.

469 C2. Any person who violates this section, when the subject of the child pornography is a person at
470 least 15 but less than 18 years of age, shall be punished by not less than one year nor more than 20
471 years in a state correctional facility. However, if the person is at least seven years older than the subject
472 of the child pornography the person shall be punished by term of imprisonment of not less than three
473 years nor more than 30 years in a state correctional facility, three years of which shall be a mandatory
474 minimum term of imprisonment. Any person who commits a second or subsequent violation of this
475 section when he is at least seven years older than the subject shall be punished by a term of
476 imprisonment of not less than 10 years nor more than 30 years, 10 years of which shall be a mandatory
477 minimum term of imprisonment.

478 C3. *The mandatory minimum terms of imprisonment prescribed for violations of this section shall be*
479 *served consecutively with any other sentence.*

480 D. For the purposes of this section it may be inferred by text, title or appearance that a person who
481 is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual
482 material is less than 18 years of age.

483 E. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act
484 occurs or where any sexually explicit visual material associated with a violation of this section is
485 produced, reproduced, found, stored, or possessed.

486 F. The provisions of this section shall be severable and, if any of its provisions shall be held
487 unconstitutional by a court of competent jurisdiction, then the decision of such court shall not affect or
488 impair any of the remaining provisions.

489 **§ 18.2-374.1:1. Possession, reproduction, distribution, solicitation, and facilitation of child**
490 **pornography; penalty.**

491 A. Any person who knowingly possesses child pornography is guilty of a Class 6 felony.

492 B. Any person who commits a second or subsequent violation of subsection A is guilty of a Class 5
493 felony.

494 C. Any person who (i) reproduces by any means, including by computer, sells, gives away,
495 distributes, electronically transmits, displays with lascivious intent, purchases, or possesses with intent to
496 sell, give away, distribute, transmit, or display child pornography with lascivious intent or (ii)
497 commands, entreats, or otherwise attempts to persuade another person to send, submit, transfer or
498 provide to him any child pornography in order to gain entry into a group, association, or assembly of
499 persons engaged in trading or sharing child pornography shall be punished by not less than five years
500 nor more than 20 years in a state correctional facility. Any person who commits a second or subsequent
501 violation under this subsection shall be punished by a term of imprisonment of not less than five years
502 nor more than 20 years in a state correctional facility, five years of which shall be a mandatory
503 minimum term of imprisonment. *The mandatory minimum terms of imprisonment prescribed for*
504 *violations of this section shall be served consecutively with any other sentence.*

505 D. Any person who intentionally operates an Internet website for the purpose of facilitating the
506 payment for access to child pornography is guilty of a Class 4 felony.

507 E. All child pornography shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

508 F. For purposes of this section it may be inferred by text, title or appearance that a person who is
509 depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual
510 material is less than 18 years of age.

511 G. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act
512 occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed in
513 violation of this section.

514 H. The provisions of this section shall not apply to any such material that is possessed for a bona
515 fide medical, scientific, governmental, law-enforcement, or judicial purpose by a physician, psychologist,
516 scientist, attorney, employee of a law-enforcement agency, or judge who possesses such material in the
517 course of conducting his professional duties as such.

518 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
519 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
520 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
521 **3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing**
522 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**
523 **amount of the necessary appropriation cannot be determined for periods of commitment to the**
524 **custody of the Department of Juvenile Justice.**