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HOUSE BILL NO. 1063

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend and reenact §§ 16.1-260, 18.2-248.1, 18.2-250.1, 18.2-251, as it is currently effective and as it may become effective, 18.2-252, 18.2-259.1, as it is currently effective and as it may become effective, 18.2-287.2, 18.2-460, 19.2-386.22, and 46.2-390.1, as it is currently effective and as it may become effective, of the Code of Virginia, relating to possession and distribution of marijuana; penalty.

Patrons—Heretick, Cole, Convirs-Fowler, Guzman, Hope, Kory, Krizek, Levine, Lindsey, Simon and Ward

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-260, 18.2-248.1, 18.2-250.1, 18.2-251, as it is currently effective and as it may become effective, 18.2-252, 18.2-259.1, as it is currently effective and as it may become effective, 18.2-287.2, 18.2-460, 19.2-386.22, and 46.2-390.1, as it is currently effective and as it may become effective, of the Code of Virginia are amended and reenacted as follows:

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests, and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk; (ii) designated nonattorney employees of the Department of Social Services may complete, sign, and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk; (iii) designated nonattorney employees of a local department of social services may complete, sign, and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, and motions for a rule to show cause; and (iv) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision, or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify, or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in

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HB1063

58 need of supervision, or delinquent only if the juvenile (i) is not alleged to have committed a violent
59 juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for
60 an offense that would be a felony if committed by an adult. A petition alleging that a juvenile
61 committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is
62 delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if
63 the juvenile had previously been proceeded against informally by intake or had been adjudicated
64 delinquent for an offense that would be a felony if committed by an adult.

65 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and
66 the attendance officer has provided documentation to the intake officer that the relevant school division
67 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the
68 court. The intake officer may defer filing the complaint for 90 days and proceed informally by
69 developing a truancy plan. The intake officer may proceed informally only if the juvenile has not
70 previously been proceeded against informally or adjudicated in need of supervision for failure to comply
71 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,
72 guardian, or other person standing in loco parentis must agree, in writing, for the development of a
73 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
74 guardian, or other person standing in loco parentis participate in such programs, cooperate in such
75 treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's
76 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
77 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
78 interagency interdisciplinary team approach. The team may include qualified personnel who are
79 reasonably available from the appropriate department of social services, community services board, local
80 school division, court service unit, and other appropriate and available public and private agencies and
81 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
82 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then
83 the intake officer shall file the petition.

84 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child
85 is in need of services, in need of supervision, or delinquent, the intake officer shall (i) develop a plan
86 for the juvenile, which may include restitution and the performance of community service, based upon
87 community resources and the circumstances which resulted in the complaint, (ii) create an official record
88 of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise
89 the juvenile and the juvenile's parent, guardian, or other person standing in loco parentis and the
90 complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent
91 based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241
92 will result in the filing of a petition with the court.

93 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
94 visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has
95 deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such
96 child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment,
97 rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a
98 protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, or (v) an act of
99 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,
100 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such
101 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to
102 be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer
103 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
104 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
105 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a
106 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
107 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
108 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
109 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
110 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to §
111 19.2-152.8, 19.2-152.9, or 19.2-152.10.

112 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
113 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be
114 in need of supervision have utilized or attempted to utilize treatment and services available in the
115 community and have exhausted all appropriate nonjudicial remedies which are available to them. When
116 the intake officer determines that the parties have not attempted to utilize available treatment or services
117 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the
118 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility,
119 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake

120 officer determines that the parties have made a reasonable effort to utilize available community
121 treatment or services may he permit the petition to be filed.

122 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
123 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
124 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
125 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic
126 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake
127 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate
128 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the
129 juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake
130 officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a
131 status offense, or a misdemeanor other than Class 1, his decision is final.

132 Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the
133 intake officer shall accept and file a petition founded upon the warrant.

134 F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition
135 which alleges facts of an offense which would be a felony if committed by an adult.

136 G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.), the intake officer shall file a
137 report with the division superintendent of the school division in which any student who is the subject of
138 a petition alleging that such student who is a juvenile has committed an act, wherever committed, which
139 would be a crime if committed by an adult, or that such student who is an adult has committed a crime
140 and is alleged to be within the jurisdiction of the court. The report shall notify the division
141 superintendent of the filing of the petition and the nature of the offense, if the violation involves:

- 142 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299
- 143 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2;
- 144 2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
- 145 3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of
- 146 Title 18.2;
- 147 4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
- 148 5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances,
- 149 pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
- 150 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
- 151 7 of Title 18.2;
- 152 7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;
- 153 8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;
- 154 9. Robbery pursuant to § 18.2-58;
- 155 10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;
- 156 11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or
- 157 12. An act of violence by a mob pursuant to § 18.2-42.1.

158 The failure to provide information regarding the school in which the student who is the subject of
159 the petition may be enrolled shall not be grounds for refusing to file a petition.

160 The information provided to a division superintendent pursuant to this section may be disclosed only
161 as provided in § 16.1-305.2.

162 H. The filing of a petition shall not be necessary:

163 1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and
164 other pedestrian offenses, game and fish laws, or a violation of the ordinance of any city regulating
165 surfing or any ordinance establishing curfew violations, animal control violations, or littering violations.
166 In such cases the court may proceed on a summons issued by the officer investigating the violation in
167 the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle
168 accident may, at the scene of the accident or at any other location where a juvenile who is involved in
169 such an accident may be located, proceed on a summons in lieu of filing a petition.

170 2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H
171 of § 16.1-241.

172 3. In the case of a misdemeanor violation of ~~§ 18.2-250.1~~, 18.2-266, 18.2-266.1, or 29.1-738, ~~or~~ the
173 commission of any other alcohol-related offense, *or a violation of § 18.2-250.1*, provided the juvenile is
174 released to the custody of a parent or legal guardian pending the initial court date. The officer releasing
175 a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall
176 also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile.
177 Disposition of the charge shall be in the manner provided in § 16.1-278.8, 16.1-278.8:01, or 16.1-278.9.
178 If the juvenile so charged with a violation of § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738
179 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical
180 analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections

181 shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The
 182 summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons
 183 shall be forwarded to the court in which the violation is to be tried. When a violation of § 18.2-250.1 is
 184 charged by summons, the juvenile shall be entitled to have the charge referred to intake for
 185 consideration of informal proceedings pursuant to subsection B, provided such right is exercised by
 186 written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging
 187 a violation of § 18.2-250.1 is served, the officer shall also serve upon the juvenile written notice of the
 188 right to have the charge referred to intake on a form approved by the Supreme Court and make return
 189 of such service to the court. If the officer fails to make such service or return, the court shall dismiss
 190 the summons without prejudice.

191 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or
 192 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
 193 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
 194 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
 195 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

196 I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of
 197 the jurisdiction granted it in § 16.1-241.

198 **§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or**
 199 **distribute marijuana.**

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

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

204 (1) 1. Not more than one-half ounce of marijuana is guilty of a Class 1 misdemeanor;

205 (2) 2. More than one-half ounce but not more than five pounds of marijuana is guilty of a Class 5 6
 206 felony;

207 (3) 3. More than five pounds of marijuana is guilty of a felony punishable by imprisonment of not
 208 less than five nor more than 30 years.

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

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

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

220 *There shall be a rebuttable presumption that a person who possesses no more than one-half ounce of*
 221 *marijuana possesses it for personal use.*

222 (d) E. When a person is convicted of a third or subsequent felony offense under this section and it is
 223 alleged in the warrant, indictment or information that he has been before convicted of two or more
 224 felony offenses under this section or of substantially similar offenses in any other jurisdiction which
 225 offenses would be felonies if committed in the Commonwealth and such prior convictions occurred
 226 before the date of the offense alleged in the warrant, indictment or information, he shall be sentenced to
 227 imprisonment for life or for any period not less than five years, five years of which shall be a
 228 mandatory minimum term of imprisonment to be served consecutively with any other sentence and he
 229 shall be fined not more than \$500,000.

230 **§ 18.2-250.1. Possession of marijuana unlawful.**

231 A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance
 232 was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in
 233 the course of his professional practice, or except as otherwise authorized by the Drug Control Act
 234 (§ 54.1-3400 et seq.). *The attorney for the Commonwealth or the county, city, or town attorney may*
 235 *prosecute such a case. Any violation of this section may be charged by summons.*

236 Upon the prosecution of a person for violation of this section, ownership or occupancy of the
 237 premises or vehicle upon or in which marijuana was found shall not create a presumption that such
 238 person either knowingly or intentionally possessed such marijuana.

239 Any person who violates this section is guilty of a misdemeanor and shall be confined in jail not
 240 more than 30 days and fined not more than \$500, either or both; any person, upon a second or
 241 subsequent conviction of a violation of this section, is guilty of a Class 1 misdemeanor subject to a civil
 242 penalty of no more than \$250 and upon a second or subsequent violation is subject to a civil penalty of

243 *no more than \$1,000. Such civil penalties are payable to the Literary Fund.*

244 B. The provisions of this section shall not apply to members of state, federal, county, city, or town
245 law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as
246 handlers of dogs trained in the detection of controlled substances when possession of marijuana is
247 necessary for the performance of their duties.

248 C. In any prosecution under this section involving marijuana in the form of cannabidiol oil or
249 THC-A oil as those terms are defined in § 54.1-3408.3, it shall be an affirmative defense that the
250 individual possessed such oil pursuant to a valid written certification issued by a practitioner in the
251 course of his professional practice pursuant to § 54.1-3408.3 for treatment or to alleviate the symptoms
252 of (i) the individual's intractable epilepsy or (ii) if such individual is the parent or legal guardian of a
253 minor or of an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's
254 intractable epilepsy. If the individual files the valid written certification with the court at least 10 days
255 prior to trial and causes a copy of such written certification to be delivered to the attorney for the
256 Commonwealth or the county, city, or town attorney prosecuting the case, such written certification shall
257 be prima facie evidence that such oil was possessed pursuant to a valid written certification.

258 **§ 18.2-251. (Contingent expiration date) Persons charged with first offense may be placed on**
259 **probation; conditions; substance abuse screening, assessment treatment and education programs or**
260 **services; drug tests; costs and fees; violations; discharge.**

261 Whenever any person who has not previously been convicted of any *criminal* offense under this
262 article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or
263 stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for
264 violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of
265 not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under
266 ~~§ 18.2-250.1~~, the court, upon such plea if the facts found by the court would justify a finding of guilt,
267 without entering a judgment of guilt and with the consent of the accused, may defer further proceedings
268 and place him on probation upon terms and conditions.

269 As a term or condition, the court shall require the accused to undergo a substance abuse assessment
270 pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or
271 services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused
272 based upon consideration of the substance abuse assessment. The program or services may be located in
273 the judicial district in which the charge is brought or in any other judicial district as the court may
274 provide. The services shall be provided by (i) a program licensed by the Department of Behavioral
275 Health and Developmental Services, by a similar program which is made available through the
276 Department of Corrections, (ii) a local community-based probation services agency established pursuant
277 to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

278 The court shall require the person entering such program under the provisions of this section to pay
279 all or part of the costs of the program, including the costs of the screening, assessment, testing, and
280 treatment, based upon the accused's ability to pay unless the person is determined by the court to be
281 indigent.

282 As a condition of probation, the court shall require the accused ~~(i)~~ (a) to successfully complete
283 treatment or education program or services, ~~(ii)~~ (b) to remain drug and alcohol free during the period of
284 probation and submit to such tests during that period as may be necessary and appropriate to determine
285 if the accused is drug and alcohol free, ~~(iii)~~ (c) to make reasonable efforts to secure and maintain
286 employment, and ~~(iv)~~ (d) to comply with a plan of at least 100 hours of community service for a felony
287 and up to 24 hours of community service for a misdemeanor. Such testing shall be conducted by
288 personnel of the supervising probation agency or personnel of any program or agency approved by the
289 supervising probation agency.

290 The court shall, unless done at arrest, order the accused to report to the original arresting
291 law-enforcement agency to submit to fingerprinting.

292 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
293 otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person
294 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without
295 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent
296 proceedings.

297 Notwithstanding any other provision of this section, whenever a court places an individual on
298 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
299 for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of
300 those sections shall be imposed. The provisions of this paragraph shall not be applicable to any offense
301 for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same
302 offense.

303 **§ 18.2-251. (Contingent effective date) Persons charged with first offense may be placed on**

304 probation; conditions; substance abuse screening, assessment treatment and education programs or
305 services; drug tests; costs and fees; violations; discharge.

306 Whenever any person who has not previously been convicted of any *criminal* offense under this
307 article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or
308 stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for
309 violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of
310 not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under
311 ~~§ 18.2-250.1~~, the court, upon such plea if the facts found by the court would justify a finding of guilt,
312 without entering a judgment of guilt and with the consent of the accused, may defer further proceedings
313 and place him on probation upon terms and conditions.

314 As a term or condition, the court shall require the accused to undergo a substance abuse assessment
315 pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or
316 services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused
317 based upon consideration of the substance abuse assessment. The program or services may be located in
318 the judicial district in which the charge is brought or in any other judicial district as the court may
319 provide. The services shall be provided by (i) a program licensed by the Department of Behavioral
320 Health and Developmental Services, by a similar program which is made available through the
321 Department of Corrections, (ii) a local community-based probation services agency established pursuant
322 to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

323 The court shall require the person entering such program under the provisions of this section to pay
324 all or part of the costs of the program, including the costs of the screening, assessment, testing, and
325 treatment, based upon the accused's ability to pay unless the person is determined by the court to be
326 indigent.

327 As a condition of probation, the court shall require the accused (a) to successfully complete treatment
328 or education program or services, (b) to remain drug and alcohol free during the period of probation and
329 submit to such tests during that period as may be necessary and appropriate to determine if the accused
330 is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to
331 comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of
332 community service for a misdemeanor. ~~In addition to any community service required by the court~~
333 ~~pursuant to clause (d), if the court does not suspend or revoke the accused's license as a term or~~
334 ~~condition of probation for a violation of § 18.2-250.1, the court shall require the accused to comply with~~
335 ~~a plan of 50 hours of community service. Such testing shall be conducted by personnel of the~~
336 ~~supervising probation agency or personnel of any program or agency approved by the supervising~~
337 ~~probation agency.~~

338 The court shall, unless done at arrest, order the accused to report to the original arresting
339 law-enforcement agency to submit to fingerprinting.

340 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
341 otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person
342 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without
343 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent
344 proceedings.

345 Notwithstanding any other provision of this section, whenever a court places an individual on
346 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
347 for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of
348 those sections shall be imposed. ~~However, if the court places an individual on probation upon terms and~~
349 ~~conditions for a violation of § 18.2-250.1, such action shall not be treated as a conviction for purposes~~
350 ~~of § 18.2-259.1 or 46.2-390.1, provided that a court (1) may suspend or revoke an individual's driver's~~
351 ~~license as a term or condition of probation and (2) shall suspend or revoke an individual's driver's~~
352 ~~license as a term or condition of probation for a period of six months if the violation of § 18.2-250.1~~
353 ~~was committed while such person was in operation of a motor vehicle. The provisions of this paragraph~~
354 ~~shall not be applicable to any offense for which a juvenile has had his license suspended or denied~~
355 ~~pursuant to § 16.1-278.9 for the same offense.~~

356 § 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing,
357 and treatment or education.

358 The trial judge or court trying the case of (i) any person found guilty of ~~violating a criminal~~
359 ~~violation of~~ any law concerning the use, in any manner, of drugs, controlled substances, narcotics,
360 marijuana, noxious chemical substances and like substances, or (ii) any minor penalized for a violation
361 of § 18.2-250.1 shall condition any suspended sentence or suspension of any civil penalty by first
362 requiring such person to agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to
363 submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the
364 court. Such testing shall be conducted by the supervising probation agency or by personnel of any
365 program or agency approved by the supervising probation agency. The cost of such testing ordered by

366 the court shall be paid by the Commonwealth and taxed as a part of the costs of such ~~criminal~~
 367 proceedings. The judge or court shall order the person, as a condition of any suspended sentence *or*
 368 *suspended civil penalty*, to undergo such treatment or education for substance abuse, if available, as the
 369 judge or court deems appropriate based upon consideration of the substance abuse assessment. The
 370 treatment or education shall be provided by a program or agency licensed by the Department of
 371 Behavioral Health and Developmental Services, by a similar program or services available through the
 372 Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes
 373 a sentence of 12 months or less, by a similar program or services available through a local or regional
 374 jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP
 375 program certified by the Commission on VASAP.

376 **§ 18.2-259.1. (Contingent expiration date) Forfeiture of driver's license for violations of article.**

377 A. In addition to any other sanction or penalty imposed for a *criminal* violation of this article *or civil*
 378 *violation of § 18.2-250.1 committed by a juvenile*, the (i) judgment of *either a* conviction under this
 379 article *or a civil violation of § 18.2-250.1 by a juvenile* or (ii) placement on probation following deferral
 380 of further proceedings under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of
 381 itself operate to deprive the person so convicted or placed on probation after deferral of proceedings
 382 under § 18.2-251 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle,
 383 engine, or train in the Commonwealth for a period of six months from the date of such judgment or
 384 placement on probation. Such license forfeiture shall be in addition to and shall run consecutively with
 385 any other license suspension, revocation or forfeiture in effect or imposed upon the person so convicted
 386 or placed on probation. However, a juvenile who has had his license suspended or denied pursuant to
 387 § 16.1-278.9 shall not have his license forfeited pursuant to this section for the same offense.

388 B. The court trying the case shall order any person so convicted or placed on probation *or any*
 389 *juvenile so penalized for a civil violation of § 18.2-250.1* to surrender his driver's license to be disposed
 390 of in accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of
 391 any such conviction *or judgment* entered and of the license forfeiture to be imposed.

392 C. In those cases where the court determines there are compelling circumstances warranting an
 393 exception, the court may provide that any individual be issued a restricted license to operate a motor
 394 vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued
 395 pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in
 396 the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender
 397 of such person's license in accordance with the provisions of subsection B and shall forward to the
 398 Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
 399 subsection. This order shall specifically enumerate the restrictions imposed and contain such information
 400 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
 401 The court shall also provide a copy of its order to such person who may operate a motor vehicle on the
 402 order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license,
 403 but only if the order provides for a restricted license for that period. A copy of the order and, after
 404 receipt thereof, the restricted license shall be carried at all times by such person while operating a motor
 405 vehicle. The court may require a person issued a restricted permit under the provisions of this subsection
 406 to be monitored by an alcohol safety action program during the period of license suspension. Any
 407 violation of the terms of the restricted license or of any condition set forth by the court related thereto,
 408 or any failure to remain drug-free during such period shall be reported forthwith to the court by such
 409 program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to
 410 this section ~~shall be~~ *is* guilty of a violation of § 46.2-301.

411 **§ 18.2-259.1. (Contingent effective date) Forfeiture of driver's license for violations of article.**

412 A. In addition to any other sanction or penalty imposed for a *criminal* violation of this article *or civil*
 413 *violation of § 19.2-250.1 committed by a juvenile*, the (i) judgment of *either a* conviction under this
 414 article *or a civil violation of § 18.2-250.1 by a juvenile* or (ii) placement on probation following deferral
 415 of further proceedings under § 18.2-251, ~~except if the proceeding was for possession of marijuana~~
 416 ~~pursuant to § 18.2-250.1~~, or subsection H of § 18.2-258.1 for any such offense shall of itself operate to
 417 deprive the person so convicted or placed on probation after deferral of proceedings under § 18.2-251 or
 418 subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine, or train in the
 419 Commonwealth for a period of six months from the date of such judgment or placement on probation.
 420 Such license forfeiture shall be in addition to and shall run consecutively with any other license
 421 suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed on
 422 probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9
 423 shall not have his license forfeited pursuant to this section for the same offense.

424 B. The court trying the case shall order any person so convicted or placed on probation *or any*
 425 *juvenile so penalized for a civil violation of § 18.2-250.1* to surrender his driver's license to be disposed
 426 of in accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of

427 any such conviction *or judgment* entered and of the license forfeiture to be imposed.

428 C. In those cases where the court determines there are compelling circumstances warranting an
 429 exception, the court may provide that any individual be issued a restricted license to operate a motor
 430 vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued
 431 pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in
 432 the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender
 433 of such person's license in accordance with the provisions of subsection B and shall forward to the
 434 Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
 435 subsection. This order shall specifically enumerate the restrictions imposed and contain such information
 436 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
 437 The court shall also provide a copy of its order to such person who may operate a motor vehicle on the
 438 order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license,
 439 but only if the order provides for a restricted license for that period. A copy of the order and, after
 440 receipt thereof, the restricted license shall be carried at all times by such person while operating a motor
 441 vehicle. The court may require a person issued a restricted permit under the provisions of this subsection
 442 to be monitored by an alcohol safety action program during the period of license suspension. Any
 443 violation of the terms of the restricted license or of any condition set forth by the court related thereto,
 444 or any failure to remain drug-free during such period shall be reported forthwith to the court by such
 445 program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to
 446 this section shall be is guilty of a violation of § 46.2-301.

447 **§ 18.2-287.2. Wearing of body armor while committing a crime; penalty.**

448 Any person who, while committing a crime of violence as defined in § 18.2-288 (2) or a felony
 449 violation of § 18.2-248 or subdivision ~~(a)~~ B 2 or 3 of § 18.2-248.1, has in his possession a firearm or
 450 knife and is wearing body armor designed to diminish the effect of the impact of a bullet or projectile
 451 shall be is guilty of a Class 4 felony.

452 **§ 18.2-460. Obstructing justice; resisting arrest; penalty.**

453 A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney
 454 for the Commonwealth, witness, any law-enforcement officer, or animal control officer employed
 455 pursuant to § 3.2-6555 in the performance of his duties as such or fails or refuses without just cause to
 456 cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the
 457 Commonwealth, witness, law-enforcement officer, or animal control officer employed pursuant to §
 458 3.2-6555, he shall be is guilty of a Class 1 misdemeanor.

459 B. Except as provided in subsection C, any person who, by threats or force, knowingly attempts to
 460 intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any
 461 law-enforcement officer, or an animal control officer employed pursuant to § 3.2-6555 lawfully engaged
 462 in his duties as such, or to obstruct or impede the administration of justice in any court, is guilty of a
 463 Class 1 misdemeanor.

464 C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a
 465 judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer,
 466 lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in
 467 any court relating to a violation of or conspiracy to violate § 18.2-248 or subdivision ~~(a)~~ ~~(3)~~, ~~(b)~~ B 3 or
 468 ~~(c)~~ subsection C or D of § 18.2-248.1, or § 18.2-46.2 or § 18.2-46.3, or relating to the violation of or
 469 conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he shall be is
 470 guilty of a Class 5 felony.

471 D. Any person who knowingly and willfully makes any materially false statement or representation
 472 to a law-enforcement officer or an animal control officer employed pursuant to § 3.2-6555 who is in the
 473 course of conducting an investigation of a crime by another is guilty of a Class 1 misdemeanor.

474 **§ 19.2-386.22. Seizure of property used in connection with or derived from illegal drug**
 475 **transactions.**

476 A. The following property shall be subject to lawful seizure by any officer charged with enforcing
 477 the provisions of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2: (i) all money, medical
 478 equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real
 479 property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or
 480 distribution of controlled substances or possession with intent to sell or distribute controlled substances
 481 in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute
 482 marijuana in violation of subdivisions ~~(a)(2)~~, ~~(a)(3)~~ and ~~(c)~~ subdivision B 2 or 3 or subsection D of
 483 § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value
 484 furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248
 485 or for marijuana in violation of § 18.2-248.1 or for a controlled substance or marijuana in violation of
 486 § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange,
 487 together with any interest or profits derived from the investment of such money or other property. Under
 488 the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum

489 prescribed punishment for the violation is a term of not less than five years.

490 B. All seizures and forfeitures under this section shall be governed by the procedures contained in
491 Chapter 22.1 (§ 19.2-386.1 et seq.).

492 **§ 46.2-390.1. (Contingent expiration date) Required revocation for conviction of drug offenses**
493 **or deferral of proceedings.**

494 A. Except as otherwise ordered pursuant to § 18.2-259.1, the Commissioner shall forthwith revoke,
495 and not thereafter reissue for six months from the later of (i) the date of conviction, *date of judgment*
496 *for a violation of § 18.2-250.1 by a juvenile*, or *date of deferral of proceedings* under § 18.2-251 or (ii)
497 the next date of eligibility to be licensed, the driver's license, registration card, and license plates of any
498 resident or nonresident on receiving notification of ~~(i)~~ (a) his conviction, ~~(ii)~~ *or a judgment for a*
499 *violation of § 18.2-250.1 by a juvenile*, (b) his having been found guilty in the case of a juvenile, or ~~(iii)~~
500 (c) the deferral of further proceedings against him under § 18.2-251 for any violation of any provisions
501 of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or of any state or federal law or valid
502 county, city, or town ordinance, or a law of any other state substantially similar to provisions of such
503 Virginia laws. Such license revocation shall be in addition to and shall run consecutively with any other
504 license suspension, revocation, or forfeiture in effect against such person.

505 B. Any person whose license has been revoked pursuant to this section and § 18.2-259.1 shall be
506 subject to the provisions of §§ 46.2-370 and 46.2-414 and shall be required to pay a reinstatement fee as
507 provided in § 46.2-411 in order to have his license restored.

508 **§ 46.2-390.1. (Contingent effective date) Required revocation for conviction of drug offenses or**
509 **deferral of proceedings.**

510 A. Except as otherwise ordered pursuant to § 18.2-259.1, the Commissioner shall forthwith revoke,
511 and not thereafter reissue for six months from the later of (i) the date of conviction, *date of judgment*
512 *for a violation of § 18.2-250.1 by a juvenile*, or *date of deferral of proceedings* under § 18.2-251, ~~unless~~
513 ~~the deferral was for proceedings for possession of marijuana pursuant to § 18.2-250.1~~, or (ii) the next
514 date of eligibility to be licensed, the driver's license, registration card, and license plates of any resident
515 or nonresident on receiving notification of (a) his conviction *or a judgment for a violation of*
516 *§ 18.2-250.1 by a juvenile*, (b) his having been found guilty in the case of a juvenile, or (c) the deferral
517 of further proceedings against him under § 18.2-251 for any violation of any provisions of Article 1
518 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, ~~unless the proceedings were for possession of marijuana~~
519 ~~pursuant to § 18.2-250.1~~, or of any state or federal law or valid county, city, or town ordinance, or a
520 law of any other state substantially similar to provisions of such Virginia laws. Such license revocation
521 shall be in addition to and shall run consecutively with any other license suspension, revocation, or
522 forfeiture in effect against such person.

523 B. Any person whose license has been revoked pursuant to this section and § 18.2-259.1 shall be
524 subject to the provisions of §§ 46.2-370 and 46.2-414 and shall be required to pay a reinstatement fee as
525 provided in § 46.2-411 in order to have his license restored.