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**HOUSE BILL NO. 288**

Offered January 8, 2020

Prefiled December 30, 2019

*A BILL to amend and reenact §§ 9.1-902, 18.2-67.10, 19.2-8, 19.2-310.2, and 19.2-392.02 of the Code of Virginia and to repeal § 18.2-370.6 of the Code of Virginia, relating to criminal sexual assault; definition of sexual abuse; complaining witness under the age of 13; penalty.*

Patrons—Gooditis and Delaney

Referred to Committee for Courts of Justice

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

**1. That §§ 9.1-902, 18.2-67.10, 19.2-8, 19.2-310.2, and 19.2-392.02 of the Code of Virginia are amended and reenacted as follows:**

**§ 9.1-902. Offenses requiring registration.**

A. For purposes of this chapter:

"Offense for which registration is required" includes:

1. Any offense listed in subsection B;

2. Criminal homicide;

3. Murder;

4. A sexually violent offense;

5. Any offense similar to those listed in subdivisions 1 through 4 under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof; and

6. Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

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

1. § 18.2-63 unless registration is required pursuant to subdivision E 1; § 18.2-64.1; former § 18.2-67.2:1; § 18.2-90 with the intent to commit rape; former § 18.1-88 with the intent to commit rape; any felony violation of § 18.2-346; any violation of subdivision (4) of § 18.2-355; any violation of subsection C of § 18.2-357.1; subsection B or C of § 18.2-374.1:1; former subsection D of § 18.2-374.1:1 as it was in effect from July 1, 1994, through June 30, 2007; former clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June 30, 2007; subsection B, C, or D of § 18.2-374.3; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5, or (iv) § 18.2-386.1.

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

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, clause (i) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, § 18.2-366, or a felony violation of former § 18.1-191.

3. *Former § 18.2-370.6.*

4. If the offense was committed on or after July 1, 2016, and where the perpetrator is 18 years of age or older and the victim is under the age of 13, any violation of § 18.2-51.2.

5. If the offense was committed on or after July 1, 2016, any violation of § 18.2-356 punishable as a Class 3 felony or any violation of § 18.2-357 punishable as a Class 3 felony.

6. If the offense was committed on or after July 1, 2019, any felony violation of § 18.2-348 or 18.2-349.

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

D. "Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or § 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section or a violation of former § 18.1-21 where the victim is (a) under 15 years of age or (b) at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

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

1. Clause (ii) and (iii) of § 18.2-48, former § 18.1-38 with the intent to defile or, for the purpose of concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished

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59 against the complaining witness's will, by force, or through the use of the complaining witness's mental  
60 incapacity or physical helplessness, or if the victim is under 13 years of age, subsection A of § 18.2-63  
61 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2,  
62 § 18.2-67.3, former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4  
63 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A  
64 and B of § 18.2-67.5, § 18.2-370, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214,  
65 § 18.2-370.1, or § 18.2-374.1;

66 2. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where  
67 the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,  
68 subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) of § 18.2-48, § 18.2-361,  
69 § 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed  
70 a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or  
71 more such offenses, provided that person had been at liberty between such convictions or adjudications;

72 3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any  
73 felony offense listed in this section. An offense listed under this subdivision shall be deemed a sexually  
74 violent offense only if the person has been convicted or adjudicated delinquent of any two or more such  
75 offenses, provided that the person had been at liberty between such convictions or adjudications; or

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

78 F. "Any offense listed in subsection B," "criminal homicide" as defined in this section, "murder" as  
79 defined in this section, and "sexually violent offense" as defined in this section includes (i) any similar  
80 offense under the laws of any foreign country or any political subdivision thereof or the United States or  
81 any political subdivision thereof or (ii) any offense for which registration in a sex offender and crimes  
82 against minors registry is required under the laws of the jurisdiction where the offender was convicted.

83 G. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a  
84 juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated  
85 delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in  
86 its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the  
87 offense require offender registration. In making its determination, the court shall consider all of the  
88 following factors that are relevant to the case: (i) the degree to which the delinquent act was committed  
89 with the use of force, threat, or intimidation, (ii) the age and maturity of the complaining witness, (iii)  
90 the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the  
91 offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the  
92 offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the  
93 case. The attorney for the Commonwealth may file such a motion at any time during which the offender  
94 is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any  
95 hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent  
96 the offender unless an attorney has been retained and appears on behalf of the offender or counsel has  
97 already been appointed.

98 H. Prior to entering judgment of conviction of an offense for which registration is required if the  
99 victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment,  
100 warrant, or information does not allege that the victim of the offense was a minor, physically helpless,  
101 or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the  
102 victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in  
103 § 18.2-67.10, and shall also determine the age of the victim at the time of the offense if it determines  
104 the victim to be a minor. When such a determination is required, the court shall advise the defendant of  
105 its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo  
106 contendere pursuant to § 19.2-296. If the court grants the defendant's motion to withdraw his plea of  
107 guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise.  
108 Failure to make such determination or so advise the defendant does not otherwise invalidate the  
109 underlying conviction.

#### 110 § 18.2-67.10. General definitions.

111 As used in this article:

112 1. "Complaining witness" means the person alleged to have been subjected to rape, forcible sodomy,  
113 inanimate or animate object sexual penetration, marital sexual assault, aggravated sexual battery, or  
114 sexual battery.

115 2. "Intimate parts" means the genitalia, anus, groin, breast, or buttocks of any person.

116 3. "Mental incapacity" means that condition of the complaining witness existing at the time of an  
117 offense under this article which prevents the complaining witness from understanding the nature or  
118 consequences of the sexual act involved in such offense and about which the accused knew or should  
119 have known.

120 4. "Physical helplessness" means unconsciousness or any other condition existing at the time of an

offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.

5. The complaining witness's "prior sexual conduct" means any sexual conduct on the part of the complaining witness ~~which~~ *that* took place before the conclusion of the trial, excluding the conduct involved in the offense alleged under this article.

6. "Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;

b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts;

c. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; ~~or~~

d. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts; *or*

*e. If the complaining witness is under the age of 13, the accused intentionally touches any part of the complaining witness's body, on either the skin or the material covering the complaining witness's body.*

#### **§ 19.2-8. Limitation of prosecutions.**

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

A prosecution for any misdemeanor violation of § 54.1-3904 shall be commenced within two years of the discovery of the offense.

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

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

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

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

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

Prosecution of any misdemeanor violation of any professional licensure requirement imposed by a locality shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

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

Prosecution for a violation for which a penalty is provided for by § 55.1-1989 shall commence within three years next after the commission of the offense.

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

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

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

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

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

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

196 A prosecution of a misdemeanor under § 18.2-64.2, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, or 18.2-67.5;  
197 ~~or 18.2-370.6~~ where the victim is a minor at the time of the offense shall be commenced no later than  
198 one year after the victim reaches majority.

199 A prosecution for a violation of § 18.2-260.1 shall be commenced within three years of the  
200 commission of the offense.

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

205 **§ 19.2-310.2. Blood, saliva, or tissue sample required for DNA analysis upon conviction of**  
206 **certain crimes; fee.**

207 A. Every person convicted of a felony on or after July 1, 1990, every person convicted of a felony  
208 offense under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 who was incarcerated on July 1,  
209 1989, and every person convicted of a misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-60.3,  
210 18.2-60.4, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-102, 18.2-119, 18.2-121, or 18.2-130,  
211 *former* § 18.2-370.6, § 18.2-387, or 18.2-387.1, or subsection E of § 18.2-460 or of any similar  
212 ordinance of any locality shall have a sample of his blood, saliva, or tissue taken for DNA  
213 (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. If a  
214 sample has been previously taken from the person as indicated by the Local Inmate Data System  
215 (LIDS), no additional sample shall be taken. The Department of Forensic Science shall provide to LIDS  
216 the most current information submitted to the DNA data bank on a weekly basis and shall remove from  
217 LIDS and the data bank persons no longer eligible to be in the data bank. A fee of \$53 shall be charged  
218 for the withdrawal of this sample. The fee shall be taxed as part of the costs of the criminal case  
219 resulting in the conviction and \$15 of the fee shall be paid into the general fund of the locality where  
220 the sample was taken and \$38 of the fee shall be paid into the general fund of the state treasury. This  
221 fee shall only be taxed one time regardless of the number of samples taken. The assessment provided  
222 for herein shall be in addition to any other fees prescribed by law. The analysis shall be performed by  
223 the Department of Forensic Science or other entity designated by the Department. The identification  
224 characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the  
225 Department in a DNA data bank and shall be made available only as provided in § 19.2-310.5.

226 B. After July 1, 1990, the blood, saliva, or tissue sample shall be taken prior to release from custody.  
227 Notwithstanding the provisions of § 53.1-159, any person convicted of an offense listed in subsection A  
228 who is in custody after July 1, 1990, shall provide a blood, saliva, or tissue sample prior to his release.  
229 Every person so convicted after July 1, 1990, who is not sentenced to a term of confinement shall  
230 provide a blood, saliva, or tissue sample as a condition of such sentence. A person required under this  
231 section to submit a sample for DNA analysis is not relieved from this requirement regardless of whether  
232 no blood, saliva, or tissue sample has been taken from the person or, if a sample has been taken,  
233 whether the sample or the results from the analysis of a sample cannot be found in the DNA data bank  
234 maintained by the Department of Forensic Science.

235 C. Nothing in this section shall prevent the Department of Forensic Science from including the  
236 identification characteristics of an individual's DNA profile in the DNA data bank as ordered by a  
237 circuit court pursuant to a lawful plea agreement.

238 D. A collection or placement of a sample for DNA analysis that was taken or retained in good faith  
239 does not invalidate the sample's use in the data bank pursuant to the provisions of this article. The  
240 detention, arrest, or conviction of a person based upon a data bank match or data bank information is  
241 not invalidated if it is determined that the sample was obtained, placed, or retained in the data bank in  
242 good faith, or if the conviction or juvenile adjudication that resulted in the collection of the DNA  
243 sample was subsequently vacated or otherwise altered in any future proceeding, including but not limited

to post-trial or post-fact-finding motions, appeals, or collateral attacks.

E. The Virginia Department of Corrections and the Department of Forensic Science shall, on a quarterly basis, compare databases of offenders under the custody or supervision of the Department of Corrections with the DNA data bank of the Department of Forensic Science. The Virginia Department of Corrections shall require a DNA sample of those offenders under its custody or supervision if they are not identified in the DNA data bank.

F. The Department of State Police shall verify that a DNA sample required to be taken for the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-903 has been received by the Department of Forensic Science. In any instance where a DNA sample has not been received, the Department of State Police or its designee shall obtain from the person required to register a sample for DNA analysis.

G. Each community-based probation services agency established pursuant to § 9.1-174 shall determine by reviewing the Local Inmate Data System upon intake and again prior to discharge whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to this section and, if no sample has been taken, require an offender to submit a sample for DNA analysis.

H. The sheriff or regional jailer shall determine by reviewing the Local Inmate Data System upon intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to this section and, if no sample has been taken, require an offender to submit a sample for DNA analysis.

**§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or disabled.**

A. For purposes of this section:

"Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, or 18.2-370.5, *former* § 18.2-370.6, § 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

"Barrier crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the barrier crime or offenses for which the person has been arrested or has been

305 convicted, the disposition of the charge, and any other information that may be useful in identifying  
306 persons arrested for or convicted of a barrier crime.

307 "Care" means the provision of care, treatment, education, training, instruction, supervision, or  
308 recreation to children or the elderly or disabled.

309 "Department" means the Department of State Police.

310 "Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or  
311 seeks to volunteer for a qualified entity.

312 "Identification document" means a document made or issued by or under the authority of the United  
313 States government, a state, a political subdivision of a state, a foreign government, political subdivision  
314 of a foreign government, an international governmental or an international quasi-governmental  
315 organization that, when completed with information concerning a particular individual, is of a type  
316 intended or commonly accepted for the purpose of identification of individuals.

317 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may  
318 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity  
319 provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised  
320 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or  
321 operate a qualified entity.

322 "Qualified entity" means a business or organization that provides care to children or the elderly or  
323 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt  
324 pursuant to subdivision A 7 of § 63.2-1715.

325 B. A qualified entity may request the Department of State Police to conduct a national criminal  
326 background check on any provider who is employed by such entity. No qualified entity may request a  
327 national criminal background check on a provider until such provider has:

328 1. Been fingerprinted; and

329 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and  
330 date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the  
331 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or  
332 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime  
333 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a  
334 background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background  
335 check report, to challenge the accuracy and completeness of any information contained in any such  
336 report, and to obtain a prompt determination as to the validity of such challenge before a final  
337 determination is made by the Department; and (v) a notice to the provider that prior to the completion  
338 of the background check the qualified entity may choose to deny the provider unsupervised access to  
339 children or the elderly or disabled for whom the qualified entity provides care.

340 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a  
341 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in  
342 subsection B, the Department shall make a determination whether the provider has been convicted of or  
343 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier  
344 crime information, the Department shall access the national criminal history background check system,  
345 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other  
346 methods of identification, and shall access the Central Criminal Records Exchange maintained by the  
347 Department. If the Department receives a background report lacking disposition data, the Department  
348 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain  
349 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry  
350 within 15 business days.

351 D. Any background check conducted pursuant to this section for a provider employed by a private  
352 entity shall be screened by the Department of State Police. If the provider has been convicted of or is  
353 under indictment for a barrier crime, the qualified entity shall be notified that the provider is not  
354 qualified to work or volunteer in a position that involves unsupervised access to children or the elderly  
355 or disabled.

356 E. Any background check conducted pursuant to this section for a provider employed by a  
357 governmental entity shall be provided to that entity.

358 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a  
359 national criminal background check, the Department and the Federal Bureau of Investigation may each  
360 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted  
361 with the fingerprints.

362 G. The failure to request a criminal background check pursuant to subsection B shall not be  
363 considered negligence per se in any civil action.

364 H. (Expires July 1, 2020) Notwithstanding any provisions in this section to the contrary, a spouse of  
365 a birth parent or parent by adoption who is not the birth parent of a child and has filed a petition for  
366 adoption of such child in circuit court may request the Department of State Police to conduct a national

367 criminal background check on such prospective adoptive parent at his cost for purposes of § 63.2-1242.  
368 Such background checks shall otherwise be conducted in accordance with the provisions of this section.  
369 **2. That § 18.2-370.6 of the Code of Virginia is repealed.**  
370 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**  
371 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
372 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
373 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**  
374 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**  
375 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for**  
376 **periods of commitment to the custody of the Department of Juvenile Justice.**