

20101961D

HOUSE BILL NO. 301

Offered January 8, 2020

Prefiled December 30, 2019

A BILL to amend and reenact §§ 16.1-260, 18.2-248.1, 18.2-250.1, 18.2-251, 18.2-252, 18.2-259.1, 18.2-287.2, 18.2-308.09, 18.2-308.1:5, 18.2-460, 19.2-386.22, and 46.2-390.1 of the Code of Virginia, relating to possession and distribution of marijuana; penalty.

Patron—Levine

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, 18.2-252, 18.2-259.1, 18.2-287.2, 18.2-308.09, 18.2-308.1:5, 18.2-460, 19.2-386.22, and 46.2-390.1 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 need of supervision, or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is

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59 delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if
60 the juvenile had previously been proceeded against informally by intake or had been adjudicated
61 delinquent for an offense that would be a felony if committed by an adult.

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

82 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child
83 is in need of services, in need of supervision, or delinquent, the intake officer shall (1) develop a plan
84 for the juvenile, which may include restitution and the performance of community service, based upon
85 community resources and the circumstances which resulted in the complaint, (2) create an official record
86 of the action taken by the intake officer and file such record in the juvenile's case file, and (3) advise
87 the juvenile and the juvenile's parent, guardian, or other person standing in loco parentis and the
88 complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent
89 based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241
90 will result in the filing of a petition with the court.

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

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

120 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an

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

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

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

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

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 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;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;

9. Robbery pursuant to § 18.2-58;

10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3;

12. An act of violence by a mob pursuant to § 18.2-42.1;

13. Abduction of any person pursuant to § 18.2-47 or 18.2-48; or

14. A threat pursuant to § 18.2-60.

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

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

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

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

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

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 commission of any other alcohol-related offense, *or a violation of § 18.2-250.1*, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. 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. 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 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The

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

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

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

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

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

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

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

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

(3) 3. More than five pounds one pound but not more than five pounds of marijuana is guilty of a Class 5 felony punishable by imprisonment of not less than five nor more than 30 years.

4. More than five pounds of marijuana is guilty of a Class 4 felony.

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

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

(c) D. Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, not for his own use is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years and a fine not to exceed \$10,000 Class 5 felony.

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

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

§ 18.2-250.1. Possession of marijuana unlawful.

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

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

Any person who violates this section is guilty of a misdemeanor and shall be confined in jail not more than 30 days and fined not more than \$500, either or both; any person, upon a second or subsequent conviction of a violation of this section, is guilty of a Class 1 misdemeanor subject to a civil penalty of no more than \$100, upon a second violation is subject to a civil penalty of no more than

244 \$250, and upon a third or subsequent violation is subject to a civil penalty of no more than \$500. Such
245 civil penalties are payable to the Literary Fund.

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

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

264 **§ 18.2-251. Persons charged with first offense may be placed on probation; conditions;**
265 **substance abuse screening, assessment treatment and education programs or services; drug tests;**
266 **costs and fees; violations; discharge.**

267 Whenever any person who has not previously been convicted of any *criminal* offense under this
268 article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or
269 stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for
270 violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of
271 not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under
272 ~~§ 18.2-250.1~~, the court, upon such plea if the facts found by the court would justify a finding of guilt,
273 without entering a judgment of guilt and with the consent of the accused, may defer further proceedings
274 and place him on probation upon terms and conditions. If the court defers further proceedings, at that
275 time the court shall determine whether the clerk of court has been provided with the fingerprint
276 identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to
277 § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a
278 law-enforcement officer.

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

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

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

303 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as
304 otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of

305 court has been provided with the fingerprint identification information or fingerprints of such person, the
306 court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under
307 this section shall be without adjudication of guilt and is a conviction only for the purposes of applying
308 this section in subsequent proceedings.

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

320 **§ 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing,**
321 **and treatment or education.**

322 The trial judge or court trying the case of (i) any person found guilty of ~~violating a criminal~~
323 *violation of* any law concerning the use, in any manner, of drugs, controlled substances, narcotics,
324 marijuana, noxious chemical substances, and like substances; *or (ii) any minor penalized for a violation*
325 *of § 18.2-250.1 shall condition any suspended sentence or suspension of any civil penalty* by first
326 requiring such person to agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to
327 submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the
328 court. Such testing shall be conducted by the supervising probation agency or by personnel of any
329 program or agency approved by the supervising probation agency. The cost of such testing ordered by
330 the court shall be paid by the Commonwealth and taxed as a part of the costs of such ~~criminal~~
331 proceedings. The judge or court shall order the person, as a condition of any suspended sentence *or*
332 *suspended civil penalty*, to undergo such treatment or education for substance abuse, if available, as the
333 judge or court deems appropriate based upon consideration of the substance abuse assessment. The
334 treatment or education shall be provided by a program or agency licensed by the Department of
335 Behavioral Health and Developmental Services, by a similar program or services available through the
336 Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes
337 a sentence of 12 months or less, by a similar program or services available through a local or regional
338 jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP
339 program certified by the Commission on VASAP.

340 **§ 18.2-259.1. Forfeiture of driver's license for violations of article.**

341 A. In addition to any other sanction or penalty imposed for a *criminal* violation of this article *or for*
342 *a civil violation of § 18.2-250.1 committed by a juvenile*, the (i) judgment of *either a* conviction under
343 this article *or a civil violation of § 18.2-250.1 by a juvenile* or (ii) placement on probation following
344 deferral of further proceedings under § 18.2-251, except if the proceeding was for possession of
345 marijuana pursuant to § 18.2-250.1, or subsection H of § 18.2-258.1 for any such offense shall of itself
346 operate to deprive the person so convicted or placed on probation after deferral of proceedings under
347 § 18.2-251 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine,
348 or train in the Commonwealth for a period of six months from the date of such judgment or placement
349 on probation. Such license forfeiture shall be in addition to and shall run consecutively with any other
350 license suspension, revocation, or forfeiture in effect or imposed upon the person so convicted or placed
351 on probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9
352 shall not have his license forfeited pursuant to this section for the same offense.

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

357 C. In those cases where the court determines there are compelling circumstances warranting an
358 exception, the court may provide that any individual be issued a restricted license to operate a motor
359 vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued
360 pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in
361 the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender
362 of such person's license in accordance with the provisions of subsection B and shall forward to the
363 Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
364 subsection. This order shall specifically enumerate the restrictions imposed and contain such information
365 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
366 The court shall also provide a copy of its order to such person who may operate a motor vehicle on the

order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, but only if the order provides for a restricted license for that period. A copy of the order and, after receipt thereof, the restricted license shall be carried at all times by such person while operating a motor vehicle. The court may require a person issued a restricted permit under the provisions of this subsection to be monitored by an alcohol safety action program during the period of license suspension. Any violation of the terms of the restricted license or of any condition set forth by the court related thereto, or any failure to remain drug-free during such period shall be reported forthwith to the court by such program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to this section ~~shall be~~ *is* guilty of a violation of § 46.2-301.

D. Any person who has been convicted under the laws of another state or the United States of a violation substantially similar to a violation of this article and whose privilege to operate a motor vehicle in the Commonwealth is subject to revocation under the provisions of § 46.2-390.1 may petition the general district court of the county or city in which he resides for restricted driving privileges. Subject to the limitations provided in subsection C, if the court determines that there are compelling circumstances warranting an exception, the court may provide that any such person be issued a restricted license to operate a motor vehicle for any of the purposes set forth in subsection E of § 18.2-271.1.

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

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

§ 18.2-308.09. Disqualifications for a concealed handgun permit.

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

6. (Effective until January 1, 2021) An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

6. (Effective January 1, 2021) An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a restoration order may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement

428 indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based
429 upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is
430 likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief
431 of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such
432 individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the
433 specific acts, or upon a written statement made under oath before a notary public of a competent person
434 having personal knowledge of the specific acts.

435 14. An individual who has been convicted of any assault, assault and battery, sexual battery,
436 discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in
437 violation of § 18.2-282 within the three-year period immediately preceding the application.

438 15. An individual who has been convicted of stalking.

439 16. An individual whose previous convictions or adjudications of delinquency were based on an
440 offense that would have been at the time of conviction a felony if committed by an adult under the laws
441 of any state, the District of Columbia, the United States or its territories. For purposes of this
442 disqualifier, only convictions occurring within 16 years following the later of the date of (i) the
443 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
444 adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall
445 not apply to an individual with previous adjudications of delinquency who has completed a term of
446 service of no less than two years in the Armed Forces of the United States and, if such person has been
447 discharged from the Armed Forces of the United States, received an honorable discharge.

448 17. An individual who has a felony charge pending or a charge pending for an offense listed in
449 subdivision 14 or 15.

450 18. An individual who has received mental health treatment or substance abuse treatment in a
451 residential setting within five years prior to the date of his application for a concealed handgun permit.

452 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period
453 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
454 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession
455 or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any
456 state, the District of Columbia, or the United States or its territories.

457 20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the
458 three-year period immediately preceding the application, upon a charge of any criminal offense set forth
459 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or
460 distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any
461 state, the District of Columbia, or the United States or its territories, the trial court found that the facts
462 of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the
463 substantially similar law of any other state, the District of Columbia, or the United States or its
464 territories *or who was subject to a civil penalty for a violation of § 18.2-250.1.*

465 **§ 18.2-308.1:5. Purchase or transportation of firearm by persons convicted of certain drug**
466 **offenses prohibited.**

467 Any person who, within a 36-consecutive-month period, has been convicted of two misdemeanor
468 offenses under subsection B of former § 18.2-248.1:1, *or* § 18.2-250 or 18.2-250.1 shall be ineligible to
469 purchase or transport a handgun. *A civil violation under § 18.2-250.1 shall be considered a conviction*
470 *for purposes of this section.* However, upon expiration of a period of five years from the date of the
471 second conviction *or civil violation* and provided the person has not been convicted of *or the subject of*
472 *a civil penalty* for any such offense within that period, the ineligibility shall be removed.

473 **§ 18.2-460. Obstructing justice; resisting arrest; fleeing from a law-enforcement officer;**
474 **penalties.**

475 A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney
476 for the Commonwealth, witness, any law-enforcement officer, or animal control officer employed
477 pursuant to § 3.2-6555 in the performance of his duties as such or fails or refuses without just cause to
478 cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the
479 Commonwealth, witness, law-enforcement officer, or animal control officer employed pursuant to §
480 3.2-6555, he is guilty of a Class 1 misdemeanor.

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

486 C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a
487 judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer,
488 lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in
489 any court relating to a violation of or conspiracy to violate § 18.2-248 or subdivision ~~(a)(3), (b) or (c)~~

B 4 or 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 conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he is guilty of a Class 5 felony.

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

E. Any person who intentionally prevents or attempts to prevent a law-enforcement officer from lawfully arresting him, with or without a warrant, is guilty of a Class 1 misdemeanor. For purposes of this subsection, intentionally preventing or attempting to prevent a lawful arrest means fleeing from a law-enforcement officer when (i) the officer applies physical force to the person, or (ii) the officer communicates to the person that he is under arrest and (a) the officer has the legal authority and the immediate physical ability to place the person under arrest, and (b) a reasonable person who receives such communication knows or should know that he is not free to leave.

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

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2: (i) all money, medical equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or distribution of controlled substances or possession with intent to sell or distribute controlled substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute *more than one pound of* marijuana in violation of subdivisions ~~(a)(2), (a)(3) and (c)~~ of § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248 or for marijuana in violation of § 18.2-248.1 or for a controlled substance or marijuana in violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange, together with any interest or profits derived from the investment of such money or other property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years.

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

§ 46.2-390.1. Required revocation for conviction of drug offenses or deferral of proceedings.

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

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