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**HOUSE BILL NO. 87**

Offered January 8, 2020

Prefiled December 10, 2019

A *BILL to amend and reenact §§ 2.2-3705.3, 2.2-3711, 3.2-4113, 4.1-225, 16.1-69.48:1, 16.1-260, 16.1-273, 16.1-278.8:01, 16.1-278.9, 17.1-805, 18.2-46.1, 18.2-247, 18.2-248, 18.2-248.01, 18.2-251, 18.2-251.03, 18.2-251.1:1, 18.2-252, 18.2-254, 18.2-255, 18.2-255.1, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, 18.2-259.1, 18.2-265.1, 18.2-265.2, 18.2-265.3, 18.2-287.2, 18.2-308.09, 18.2-308.1:5, 18.2-308.4, 18.2-460, 18.2-474.1, 19.2-11.2, 19.2-66, 19.2-81.1, 19.2-83.1, 19.2-120, 19.2-188.1, 19.2-303.01, 19.2-386.22 through 19.2-386.25, 19.2-386.28, 19.2-389, as it is currently effective and as it shall become effective, 19.2-392.02, 22.1-277.08, 24.2-233, 37.2-416, 46.2-390.1, 52-35, 53.1-231.2, 54.1-2903, 54.1-3408.3, 54.1-3442.6, and 54.1-3442.8 of the Code of Virginia; to amend the Code of Virginia by adding in Title 3.2 a chapter numbered 41.2, containing articles numbered 1 through 7, consisting of sections numbered 3.2-4121 through 3.2-4199.6; and to repeal §§ 18.2-248.1, 18.2-250.1, and 18.2-251.1 of the Code of Virginia, relating to the cultivation, manufacture, sale, possession, and testing of marijuana; penalties.*

Patrons—Carter and Samirah

Referred to Committee for Courts of Justice

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

1. That §§ 2.2-3705.3, 2.2-3711, 3.2-4113, 4.1-225, 16.1-69.48:1, 16.1-260, 16.1-273, 16.1-278.8:01, 16.1-278.9, 17.1-805, 18.2-46.1, 18.2-247, 18.2-248, 18.2-248.01, 18.2-251, 18.2-251.03, 18.2-251.1:1, 18.2-252, 18.2-254, 18.2-255, 18.2-255.1, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, 18.2-259.1, 18.2-265.1, 18.2-265.2, 18.2-265.3, 18.2-287.2, 18.2-308.09, 18.2-308.1:5, 18.2-308.4, 18.2-460, 18.2-474.1, 19.2-11.2, 19.2-66, 19.2-81.1, 19.2-83.1, 19.2-120, 19.2-188.1, 19.2-303.01, 19.2-386.22 through 19.2-386.25, 19.2-386.28, 19.2-389, as it is currently effective and as it shall become effective, 19.2-392.02, 22.1-277.08, 24.2-233, 37.2-416, 46.2-390.1, 52-35, 53.1-231.2, 54.1-2903, 54.1-3408.3, 54.1-3442.6, and 54.1-3442.8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 3.2 a chapter numbered 41.2, containing articles numbered 1 through 7, consisting of sections numbered 3.2-4121 through 3.2-4199.6, as follows:

**§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.**

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to *Chapter 41.2* (§ 3.2-4121 *et seq.*) of Title 3.2 or Article 1.1:1 (§ 18.2-340.15 *et seq.*) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth pursuant to § 54.1-108.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 *et seq.*) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 *et seq.*) or under any local ordinance adopted in accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1,

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1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this subdivision shall prevent the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Information relating to studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such information has not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. The names, addresses, and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

9. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

10. Information furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of such information to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

11. Information contained in (i) an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, and (ii) an active investigation conducted by or for the Board of Education related to the denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses including investigator notes and other correspondence and information, furnished in confidence with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a) application information to the applicant at his own expense or (b) investigation information to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The completed investigation information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information regarding a current or former student shall be released except as permitted by state or federal law.

12. Information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, information related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

**§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any public institution of higher education in the Commonwealth or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the ~~business'~~ *business's* or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in the Commonwealth shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

182 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the  
183 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority,  
184 and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from  
185 private sources.

186 11. Discussion or consideration of honorary degrees or special awards.

187 12. Discussion or consideration of tests, examinations, or other information used, administered, or  
188 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

189 13. Discussion, consideration, or review by the appropriate House or Senate committees of possible  
190 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement  
191 filed by the member, provided the member may request in writing that the committee meeting not be  
192 conducted in a closed meeting.

193 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to  
194 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing  
195 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating  
196 position of the governing body or the establishment of the terms, conditions and provisions of the siting  
197 agreement, or both. All discussions with the applicant or its representatives may be conducted in a  
198 closed meeting.

199 15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic  
200 activity and estimating general and nongeneral fund revenues.

201 16. Discussion or consideration of medical and mental health records subject to the exclusion in  
202 subdivision 1 of § 2.2-3705.5.

203 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to  
204 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and  
205 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game  
206 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3  
207 and subdivision 11 of § 2.2-3705.7.

208 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity  
209 of, or information tending to identify, any prisoner who (i) provides information about crimes or  
210 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the  
211 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders  
212 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

213 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific  
214 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement  
215 or emergency service officials concerning actions taken to respond to such matters or a related threat to  
216 public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2,  
217 where discussion in an open meeting would jeopardize the safety of any person or the security of any  
218 facility, building, structure, information technology system, or software program; or discussion of reports  
219 or plans related to the security of any governmental facility, building or structure, or the safety of  
220 persons using such facility, building or structure.

221 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or  
222 of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of  
223 trustees of a trust established by one or more local public bodies to invest funds for postemployment  
224 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title  
225 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the  
226 Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,  
227 holding or disposition of a security or other ownership interest in an entity, where such security or  
228 ownership interest is not traded on a governmentally regulated securities exchange, to the extent that  
229 such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of  
230 Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia  
231 College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or  
232 the Virginia College Savings Plan under a promise of confidentiality, of the future value of such  
233 ownership interest or the future financial performance of the entity, and (ii) would have an adverse  
234 effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a  
235 local finance board or board of trustees, the board of visitors of the University of Virginia, or the  
236 Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure  
237 of information relating to the identity of any investment held, the amount invested or the present value  
238 of such investment.

239 21. Those portions of meetings in which individual child death cases are discussed by the State Child  
240 Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which  
241 individual child death cases are discussed by a regional or local child fatality review team established  
242 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by  
243 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in

which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, and those portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8.

22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching staffs and qualifications for appointments thereto.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application information subject to the exclusion in subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of information subject to the exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. Discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunication services or cable television services and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this

subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6.

34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.

35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative files subject to the exclusion in subdivision B 1 of § 2.2-3706.

36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port Authority.

38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-3705.6 related to economic development.

40. Discussion or consideration by the Board of Education of information relating to the denial, suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

41. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of information subject to the exclusion in subdivision 8 of § 2.2-3705.2.

42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable information of donors.

43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information contained in grant applications.

44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary information of a private entity provided to the Authority.

45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of applicants for licenses and permits and of licensees and permittees.

47. Discussion or consideration of grant or loan application records subject to the exclusion in subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § 23.1-3133 or by the Virginia Research Investment Committee.

48. Discussion or development of grant proposals by a regional council established pursuant to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response

team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii) individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and 63.2-1605.

50. Discussion or consideration by the Board of the Virginia Economic Development Partnership Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33 of § 2.2-3705.7.

51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114.

52. *Discussion or consideration by the Board of Agriculture and Consumer Services of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of applicants for licenses and permits and of licensees and permittees.*

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

#### **§ 3.2-4113. Production of industrial hemp lawful.**

A. It is lawful for a grower or his agent to grow, a dealer or his agent to deal in, or a processor or his agent to process industrial hemp in the Commonwealth for any lawful purpose. No grower or his agent, dealer or his agent, or processor or his agent shall be prosecuted under ~~§ 18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-250, or 18.2-250.1~~ *3.2-4164, 3.2-4165, 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4172, or 3.2-4177* for the possession, growing, dealing, or processing of industrial hemp. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.), it shall not be necessary to negate any exception, excuse, proviso, or exemption contained in this chapter or the Drug Control Act, and the burden of proof of any such exception, excuse, proviso, or exemption shall be on the defendant.

B. Nothing in this chapter shall be construed to authorize any person to violate any federal law or regulation.

C. No person shall be prosecuted under ~~§ 18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-250, or 18.2-250.1~~ *3.2-4164, 3.2-4165, 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4172, or 3.2-4177* for the involuntary growth of industrial hemp through the inadvertent natural spread of seeds or pollen as a result of proximity to a production field, dealership, or process site.

#### **CHAPTER 41.2.**

#### **MARIJUANA.**

#### **Article 1.**

#### **General Provisions.**

#### **§ 3.2-4121. Definitions.**

*As used in this chapter, unless the context requires a different meaning:*

"Child-resistant" means, with respect to packaging or a container: (i) specially designed or constructed to be significantly difficult for a typical child under five years of age to open and not to be significantly difficult for a typical adult to open and reseal and (ii) with respect to any product intended for more than a single use or that contains multiple servings, resealable.

"Cultivation" or "cultivate" means the planting, propagation, growing, harvesting, drying, curing,

428 grading, trimming, or other similar processing of marijuana for use or sale. "Cultivation" or "cultivate"  
429 does not include manufacturing or testing.

430 "Edible marijuana product" means a marijuana product intended to be consumed orally, including  
431 any type of food, drink, or pill containing marijuana or marijuana concentrate.

432 "Licensed premises" means the premises specified in a license to operate a marijuana establishment  
433 within which the licensee is authorized under this chapter and the regulations adopted pursuant to this  
434 chapter to cultivate, manufacture, test, or sell retail marijuana or retail marijuana products.

435 "Licensee" means a person licensed pursuant to this chapter to operate a marijuana establishment.

436 "Locality" means counties, cities, towns, authorities, or special districts in the Commonwealth.

437 "Local license" means a license issued by a locality pursuant to § 3.2-4150 that permits a person to  
438 operate a marijuana establishment in such locality.

439 "Manufacturing" or "manufacture" means the production of marijuana products or the blending,  
440 infusing, compounding, or other preparation of marijuana and marijuana products, including marijuana  
441 extraction or preparation by means of chemical synthesis. "Manufacturing" or "manufacture" does not  
442 include cultivation or testing.

443 "Marijuana" means any part of a plant of the genus *Cannabis* whether growing or not, its seeds, or  
444 its resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its  
445 seeds, or its resin. "Marijuana" does not include any oily extract containing one or more cannabinoids  
446 unless such extract contains less than 12 percent of tetrahydrocannabinol by weight, nor does  
447 "marijuana" include the mature stalks of such plant, fiber produced from such stalk, or oil or cake  
448 made from the seeds of such plant, unless such stalks, fiber, oil, or cake is combined with other parts of  
449 plants of the genus *Cannabis*. "Marijuana" does not include (i) industrial hemp, as defined in  
450 § 3.2-4112, that is possessed by a person registered pursuant to § 3.2-4115 or his agent or (ii) a hemp  
451 product, as defined in § 3.2-4112, containing a tetrahydrocannabinol concentration of no greater than  
452 0.3 percent that is derived from industrial hemp, as defined in § 3.2-4112, that is grown, dealt, or  
453 processed in compliance with state or federal law.

454 "Marijuana concentrate" means marijuana that has undergone a process to concentrate one or more  
455 active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a  
456 marijuana plant is a concentrate for purposes of this chapter.

457 "Marijuana cultivation facility" means a facility licensed under this chapter to purchase marijuana  
458 plants and seeds from other marijuana cultivation facilities; to cultivate, label, and package marijuana;  
459 to transfer possession of retail marijuana to marijuana secure transporters; to sell marijuana to  
460 marijuana manufacturing facilities, to retail marijuana stores, and to other marijuana cultivation  
461 facilities; and to sell marijuana plants and seeds to other marijuana cultivation facilities and immature  
462 marijuana plants and seedlings to retail marijuana stores.

463 "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a  
464 marijuana manufacturing facility, a marijuana secure transporter, a retail marijuana store, or a  
465 marijuana microbusiness.

466 "Marijuana manufacturing facility" means a facility licensed under this chapter to purchase  
467 marijuana from a marijuana cultivation facility or another marijuana manufacturing facility; to  
468 manufacture, label, and package marijuana and marijuana products; to transfer possession of its retail  
469 marijuana and retail marijuana products to marijuana secure transporters; and to sell marijuana and  
470 marijuana products to marijuana stores and to other marijuana manufacturing facilities.

471 "Marijuana microbusiness" means a facility licensed under this chapter to cultivate not more than  
472 150 marijuana plants; to prepare, manufacture, label, and package marijuana and marijuana products  
473 obtained from such plants; and to sell such marijuana and marijuana products to consumers. A  
474 "marijuana microbusiness" may not sell or otherwise transfer marijuana to any other marijuana  
475 establishment.

476 "Marijuana paraphernalia" means all equipment, products, and materials of any kind that are either  
477 designed for use or are intended for use in planting, propagating, cultivating, growing, harvesting,  
478 manufacturing, compounding, converting, producing, processing, preparing, strength testing, analyzing,  
479 packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing  
480 into the human body marijuana.

481 "Marijuana products" means products that are composed of marijuana and other ingredients and are  
482 intended for use or consumption, including edible products, ointments, and tinctures.

483 "Marijuana secure transporter" means a person licensed under this chapter to obtain marijuana from  
484 a marijuana establishment and transport such marijuana to another marijuana establishment.

485 "Marijuana testing facility" means a facility licensed under this chapter to develop, research, and  
486 test marijuana, marijuana products, and other substances.

487 "Non-retail marijuana" means marijuana that is not cultivated, manufactured, or sold by a licensed  
488 marijuana establishment.

489 "Non-retail marijuana products" means marijuana products that are not manufactured and sold by a



licensed marijuana establishment.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Retail marijuana" means marijuana that is cultivated, manufactured, or sold by a licensed marijuana establishment or that is cultivated or manufactured by a person pursuant to § 3.2-4162.

"Retail marijuana products" means marijuana products that are manufactured and sold by a licensed marijuana establishment or that are manufactured by a person pursuant to § 3.2-4162.

"Retail marijuana store" means a facility licensed under this chapter to purchase marijuana, immature marijuana plants, and seedlings from a marijuana cultivation facility; to purchase marijuana and marijuana products from a marijuana manufacturing facility; to receive possession of retail marijuana and retail marijuana products from marijuana secure transporters; and to sell retail marijuana, retail marijuana products, immature marijuana plants, and seedlings to consumers.

"State license" means a license issued by the Board that permits a person to operate a marijuana establishment.

"Testing" or "test" means the research and analysis of marijuana, marijuana products, or other substances for contaminants, safety, or potency. "Testing" or "test" does not include cultivation or manufacturing.

"Unreasonably impracticable" means that the measures necessary to comply with the regulations or ordinances adopted pursuant to this chapter subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marijuana establishment.

#### **§ 3.2-4122. Powers and duties of the Board.**

The Board shall have the following powers and duties in regard to administering the provisions of this chapter:

1. Adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 3.2-4123;

2. Hold and conduct hearings, issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers, and other documents before the Board, and administer oaths and take testimony thereunder. The Board may authorize any Board member to hold and conduct hearings, issue subpoenas, administer oaths, and take testimony thereunder, and decide cases, subject to final decision by the Board, on application of any party aggrieved. The Board may enter into consent agreements and may request and accept from any applicant or licensee a consent agreement in lieu of proceedings on (i) objections to the issuance of a license or (ii) disciplinary action. Any such consent agreement shall include findings of fact and may include an admission or a finding of a violation. A consent agreement shall not be considered a case decision of the Board and shall not be subject to judicial review under the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) but may be considered by the Board in future disciplinary hearings;

3. Grant, suspend, and revoke licenses for the cultivation, manufacture, transportation, sale, and testing of retail marijuana and retail marijuana products as provided by law;

4. Assess and collect civil penalties and civil charges for violations of this chapter and Board regulations;

5. Employ personnel and contract with advisors and consultants as necessary to adequately perform its duties;

6. Hold at least four public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to the administration of this chapter;

7. Submit an annual report to the Governor and the General Assembly on or before December 15 of each year. Such report shall contain the following information for the year ending the previous June 30:

(i) the number of state licenses of each category issued; (ii) demographic information concerning the licensees; (iii) a description of enforcement and disciplinary actions taken against licensees; and (iv) a statement of revenues and expenses of the Board related to the implementation, administration, and enforcement of this chapter. Such report shall be governed by the provisions of § 2.2-608; and

8. Do all acts necessary or advisable to carry out the purposes of this chapter.

#### **§ 3.2-4123. Authority of the Board to adopt regulations.**

A. The Board may adopt reasonable regulations, not inconsistent with this chapter or the general laws of the Commonwealth, that it deems necessary to carry out the provisions of this chapter and to prevent the illegal cultivation, manufacture, sale, and testing of retail marijuana and retail marijuana products.

B. The Board may also adopt regulations to provide for the issuance of additional types or classes of state licenses to operate marijuana-related businesses, including licenses that authorize only limited cultivation, manufacturing, transportation, delivery, storage, sale, or purchase of marijuana, licenses that authorize the consumption of retail marijuana and retail marijuana products within designated

551 areas, licenses that authorize the consumption of retail marijuana and retail marijuana products at  
552 special events in limited areas and for a limited time, licenses that authorize cultivation for purposes of  
553 propagation, and licenses intended to facilitate scientific research or education.

554 C. The Board shall adopt regulations pursuant to this chapter in accordance with the Administrative  
555 Process Act (§ 2.2-4000 et seq.).

556 D. Board regulations shall be uniform in their application.

557 E. Courts shall take judicial notice of Board regulations.

558 F. The Board's power to regulate shall be broadly construed.

559 **§ 3.2-4124. Regulations.**

560 A. The Board shall adopt regulations pursuant to § 3.2-4123 that:

561 1. Develop such forms, licenses, identification cards, and applications as are necessary or convenient  
562 for the administration of this chapter;

563 2. Prescribe procedures for issuing, renewing, suspending, and revoking a state license;

564 3. Provide a schedule of application, licensing, and renewal fees for marijuana establishments in  
565 amounts not more than necessary to pay for the implementation, administration, and enforcement costs  
566 of this chapter and that are proportional to the size of each category of licensee or the volume of  
567 business conducted by each category of licensee;

568 4. Provide a schedule of penalties and fines for violations of this chapter or regulations adopted  
569 hereunder;

570 5. Establish requirements for all licensees under this chapter for the form, content, and retention of  
571 all records and accounts;

572 6. Ensure compliance with the provisions of this chapter by requiring inspections of all licensees at a  
573 frequency determined by the Board;

574 7. Govern the outdoor cultivation of marijuana by a marijuana cultivation facility licensee, including  
575 security requirements to include lighting, physical security, and alarm requirements, provided that such  
576 requirements do not prohibit the cultivation of marijuana outdoors or in a greenhouse;

577 8. Establish requirements for securely transporting marijuana between marijuana establishments;

578 9. Establish sanitary standards for retail marijuana product preparation;

579 10. Establish a testing program for retail marijuana and retail marijuana products pursuant to  
580 § 3.2-4153;

581 11. Establish requirements for health and safety warning labels to be placed on retail marijuana and  
582 retail marijuana products to be sold or offered for sale by a licensee to a consumer in accordance with  
583 the provisions of this chapter;

584 12. Establish a maximum tetrahydrocannabinol level for retail marijuana products;

585 13. Establish reasonable time, place, and manner restrictions on outdoor advertising of retail  
586 marijuana and retail marijuana products, not inconsistent with the provisions of this chapter, so that  
587 such advertising does not encourage or otherwise promote the use or consumption of retail marijuana  
588 or retail marijuana products by persons under 21 years of age. Such regulations shall permit (i) any  
589 outdoor signage or advertising not otherwise prohibited by this chapter and (ii) the display of outdoor  
590 retail marijuana or retail marijuana product advertising on lawfully erected billboard signs regulated  
591 under Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real  
592 estate as defined in § 55.1-1100, but only in accordance with this chapter;

593 14. Prescribe which hours or days, if any, that retail marijuana or retail marijuana products shall  
594 not be sold by retail marijuana store licensees;

595 15. Establish a plan to promote and encourage participation in the marijuana industry by people  
596 from communities that have been disproportionately impacted by marijuana prohibition and enforcement  
597 and to positively impact those communities; and

598 16. Require retail marijuana store licensees to file an appeal from any hearing decision rendered by  
599 a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to  
600 the licensee at the address on record with the Board by certified mail, return receipt requested, and by  
601 regular mail.

602 B. The Board shall not adopt regulations that:

603 1. Establish a limit on the number of any type of state licenses that may be granted;

604 2. Require a customer to provide a retail marijuana store with identifying information other than  
605 identification necessary to determine the customer's age or require the retail marijuana store to acquire  
606 or record personal information about customers other than information typically required in a retail  
607 transaction; or

608 3. Are unreasonably impracticable.

609 **§ 3.2-4125. Hearings; representation by counsel.**

610 Any licensee or applicant for any license granted by the Board shall have the right to be represented  
611 by counsel at any Board hearing for which he has received notice but shall not be required to be  
612 represented by counsel during such hearing.

**§ 3.2-4126. Hearings; allowances to witnesses.**

Witnesses subpoenaed to appear on behalf of the Board shall be entitled to the same allowance for expenses as witnesses for the Commonwealth in criminal cases in accordance with § 17.1-611. Such allowances shall be paid out of the fund from which other costs incurred by the Board are paid upon certification to the Comptroller.

**§ 3.2-4127. Seed-to-sale tracking system.**

To ensure that no retail marijuana grown or processed by a marijuana establishment is sold or otherwise transferred except by a retail marijuana store or as otherwise authorized by law, the Board shall develop and maintain a seed-to-sale tracking system that tracks retail marijuana from either the seed or immature plant stage until the retail marijuana or retail marijuana product is sold to a customer at a retail marijuana store.

**§ 3.2-4128. Employment practices.**

An employer:

1. Shall not be required to permit or accommodate the use, consumption, possession, trade, display, transportation, sale, or cultivation of marijuana or marijuana products in the workplace;

2. May enact and enforce workplace policies restricting the use of marijuana and marijuana products by employees in the workplace or while otherwise engaged in activities within the course and scope of employment; and

3. May discipline employees who are under the influence of marijuana in the workplace or while otherwise engaged in activities within the course and scope of employment in accordance with the employer's workplace policies regarding the use of marijuana and marijuana products by employees.

**§ 3.2-4129. Prohibition or regulation of retail marijuana and retail marijuana products on private property.**

A person shall not be prohibited from prohibiting or otherwise regulating the cultivation, manufacture, testing, distribution, sale, display, or consumption of retail marijuana or retail marijuana products on property such person owns, occupies, or manages, provided that a lease agreement may not prohibit a tenant from lawfully possessing and consuming retail marijuana or retail marijuana products by means other than smoking.

**§ 3.2-4130. Custody or visitation with a minor.**

A person shall not be denied custody or visitation with a minor due to conduct that is permitted by this chapter, unless such person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

**Article 2.**

**Administration of Licenses.**

**§ 3.2-4131. General licensing requirements; penalty.**

A. An applicant for a license to operate a marijuana establishment shall submit an application to the Board on forms provided by the Board, accompanied by any fees required by the Board, and meet each of the following requirements, if applicable. Except as otherwise provided in this section, if the applicant is a business entity, every officer, director, manager, and general partner of the business entity shall meet each of the requirements of this section. An applicant shall disclose in or include with its application the names and addresses of the applicant and all natural persons and business entities having a direct or indirect financial interest in the applied-for license and the nature and extent of the financial interest held by each such person or entity and, if applicable, the nature and extent of any financial interest the person or entity has in any other license applied for or issued under this chapter.

1. The applicant shall be at least 21 years of age. If the applicant is a business entity, every officer, director, manager, and general partner of the business entity shall be at least 21 years of age.

2. The applicant shall not have had a license, permit, certificate, or other government-issued authorization issued in another jurisdiction allowing the cultivation, manufacture, testing, or sale of marijuana or marijuana products revoked.

3. The applicant shall not have been convicted within seven years of the date of application in any state, territory, or foreign jurisdiction of any felony, nor within seven years of the date of application shall the applicant have been convicted of an offense in another state, territory, or foreign jurisdiction, which if committed in Virginia would be a felony. Such conviction shall be treated as a felony conviction under this section regardless of its designation in the other state, territory, or foreign jurisdiction. Any applicant who has been convicted of a felony seven years or more prior to the date of the application shall have completed all terms of sentencing and probation in order to be eligible for a license. For purposes of this subdivision, the term "felony" shall not include any violation of § 3.2-4167, 3.2-4168, 3.2-4169, 3.2-4170, 3.2-4172, 3.2-4173, 3.2-4174, 3.2-4176, 3.2-4177, 3.2-4178, 3.2-4194, 3.2-4195, or 3.2-4171.

a. The applicant shall submit fingerprints and personal descriptive information to the Board.

b. The Board shall forward the personal descriptive information along with the applicant's

674 fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for  
675 the purpose of obtaining a national criminal history record information check regarding such applicant.  
676 The cost of the fingerprinting and criminal history record information check shall be paid by the  
677 applicant.

678 c. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that  
679 no record exists, shall make a report to the Board.

680 d. If an applicant is denied a license because of the information appearing in his criminal history  
681 record, the Board shall notify the applicant that information obtained from the Central Criminal  
682 Records Exchange contributed to such denial. The information shall not be disseminated except as  
683 provided for in this section.

684 4. The applicant shall not be a manufacturer, distributor, or retailer of alcoholic beverages licensed  
685 under Chapter 2 (§ 4.1-200 et seq.) of Title 4.1 nor shall the applicant be a retailer of tobacco or  
686 tobacco products.

687 B. Any application filed pursuant to this section shall be verified by the oath or affirmation of the  
688 applicant or an officer of the applicant that all of the information contained therein is true. Any person  
689 who knowingly makes a false statement to the Board for the purposes of obtaining a license under this  
690 chapter is guilty of a Class 4 felony. The Board shall revoke the license of a licensee if, subsequent to  
691 the issuance of the license, the Board determines that the licensee knowingly or recklessly made a false  
692 statement of material fact to the Board in applying for the license.

693 C. Upon receipt of a complete application and application fee, the Board shall forward a copy of the  
694 application to the locality in which the marijuana establishment is proposed to be located, determine  
695 whether the applicant and the premises qualify for the state license by meeting the requirements of this  
696 chapter and Board regulations, and issue the appropriate license or send the applicant a notice of  
697 rejection within 90 days setting forth the specific reasons why the Board did not approve the state  
698 license application.

699 **§ 3.2-4132. Notice to localities.**

700 The Board shall notify the local governing body wherein each marijuana establishment is proposed  
701 to be located through the county or city attorney or the chief law-enforcement officer of the locality of  
702 each license application that is received by the Board. Local governing bodies shall notify the Board  
703 whether the proposed marijuana establishment is in compliance with any ordinance adopted by the  
704 locality pursuant to § 3.2-4150 and in effect at the time of the application and submit any other  
705 objections to the granting of a license within 30 days of the filing of the application.

706 If a locality limits the number of marijuana establishments that may be licensed in such locality  
707 through an ordinance adopted pursuant to § 3.2-4150 and such limit prevents the Board from issuing a  
708 state license to all applicants who meet the licensing requirements of this chapter, the locality shall  
709 select which of the competing applications to forward to the Board for approval in a competitive  
710 process intended to select applicants who are best suited to operate in compliance with the provisions of  
711 this chapter within the locality.

712 **§ 3.2-4133. Multiple licenses awarded to one person permitted; exceptions.**

713 A. As used in this section, "interest" means an equity ownership interest or a partial equity  
714 ownership interest or any other type of financial interest, including but not limited to being an investor  
715 or serving in a management position.

716 B. A person shall be permitted to possess one or any combination of the following licenses:  
717 marijuana cultivation facility license, marijuana manufacturing facility license, or retail marijuana store  
718 license. However, no licensee who has been issued either a marijuana cultivation facility license,  
719 marijuana manufacturing facility license, or retail marijuana store license shall be issued a marijuana  
720 testing facility license, marijuana secure transporter license, or marijuana microbusiness license or have  
721 any interest in a marijuana testing facility licensee, marijuana secure transporter licensee, or marijuana  
722 microbusiness licensee. Additionally, no licensee who has been issued a marijuana testing facility  
723 license, marijuana secure transporter license, or marijuana microbusiness license shall be issued a  
724 marijuana cultivation facility license, marijuana manufacturing facility license, or retail marijuana store  
725 license or have any interest in a marijuana cultivation facility licensee, marijuana manufacturing facility  
726 licensee, or retail marijuana store licensee.

727 C. Additionally, no person shall be permitted to have any interest in more than five marijuana  
728 cultivation facility licensees or in more than one marijuana microbusiness licensee. However, the Board  
729 may approve an application from a person who holds an interest in more than five marijuana  
730 cultivation facility licensees or in more than one marijuana microbusiness licensee if, after January 1,  
731 2023, the Board adopts a regulation authorizing a person to hold an interest in more than five  
732 marijuana cultivation facility licensees or in more than one marijuana microbusiness licensee.

733 **§ 3.2-4134. Each license separate; posting; expiration.**

734 A. Each license granted by the Board to an applicant under this chapter is separate and distinct  
735 from any other license issued by the Board to that same applicant under this chapter.

B. Each license granted by the Board shall designate the place where the business of the licensee will be carried out.

C. Each license shall be posted in a location conspicuous to the public at the place where the licensee carries out the business for which the license is granted.

D. The privileges conferred by any license granted by the Board shall continue until the last day of the twelfth month next ensuing or the last day of the designated month and year of expiration, except the license may be sooner terminated for any cause for which the Board would be entitled to refuse to grant a license or by operation of law, voluntary surrender, or order of the Board.

E. The Board may grant licenses for one year or for multiple years, not to exceed three years. Qualifications for a multiyear license shall be determined on the basis of criteria established by the Board. Fees for multiyear licenses shall not be refundable.

**§ 3.2-4135. Licensee shall maintain possession of premises.**

As a condition of licensure, a licensee shall at all times maintain possession of the licensed premises of the marijuana establishment that the licensee is licensed to operate, whether pursuant to a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises. If the licensee fails to maintain possession of the licensed premises, the license shall be revoked by the Board.

**§ 3.2-4136. Conditions under which Board may refuse to grant licenses.**

The Board may refuse to grant any license if it has reasonable cause to believe that:

1. The applicant, or if the applicant is a business entity, any officer, director, manager, or general partner of the business entity:

a. Is not 21 years of age or older;

b. Is not a resident of the Commonwealth;

c. Has been convicted in any court of a felony under the laws of any state, or of the United States, within seven years of the date of the application or has not completed all terms of sentencing and probation resulting from any such felony conviction. For purposes of this subdivision, the term "felony" shall not include any violation of § 3.2-4167, 3.2-4168, 3.2-4169, 3.2-4170, 3.2-4172, 3.2-4173, 3.2-4174, 3.2-4176, 3.2-4177, 3.2-4178, 3.2-4194, 3.2-4195, or 3.2-4171;

d. Is not a person of good moral character and repute;

e. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business that have not been disclosed;

f. Has not demonstrated financial responsibility sufficient to meet the requirements of the business proposed to be licensed;

g. Has misrepresented a material fact in applying to the Board for a license;

h. Has defrauded or attempted to defraud the Board, or any federal, state, or local government or governmental agency or authority, by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state, or local government or governmental agency or authority, by making or maintaining business records required by statute or regulation that are false or fraudulent; or

i. Is a member or employee of the Board.

2. The place to be occupied by the applicant:

a. Does not conform to the requirements of the governing body of the county, city, or town in which such place is located with respect to sanitation, health, construction, or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulation;

b. Is so located that granting a license and operation thereunder by the applicant would result in violations of this chapter or Board regulations or violation of the laws of the Commonwealth or local ordinances relating to peace and good order;

c. Is so located with respect to any church or synagogue; hospital; public, private, or parochial school or institution of higher education; public or private playground or other similar recreational facility; or state, local, or federal government-operated facility that the operation of such place under such license will adversely affect or interfere with the normal, orderly conduct of the affairs of such facilities or institutions;

d. Is located in an area zoned exclusively for residential use or within 1,000 feet of a public or private elementary or secondary school; or

e. Is so located with respect to any residence or residential area that the operation of such place under such license will adversely affect real property values or substantially interfere with the usual quietude and tranquility of such residence or residential area.

3. There exists any law, ordinance, or regulation of the United States, the Commonwealth, or any political subdivision thereof that warrants refusal by the Board to grant any license.

4. The Board is not authorized under this chapter to grant such license.

797 **§ 3.2-4137. Conditions under which the Board shall refuse to grant licenses.**

798 The Board shall refuse to grant any license to any member or employee of the Board or to any  
799 corporation or other business entity in which such member or employee is a stockholder or has any  
800 other economic interest.

801 Whenever any other elected or appointed official of the Commonwealth or any political subdivision  
802 thereof applies for such a license or continuance thereof, he shall state on the application the official  
803 position he holds, and whenever a corporation or other business entity in which any such official is a  
804 stockholder or has any other economic interest applies for such a license, it shall state on the  
805 application the full economic interests of each such official in such corporation or other business entity.

806 **§ 3.2-4138. Hearing for refusal to grant licenses; Administrative Process Act.**

807 The action of the Board in granting or in refusing to grant any license shall be subject to judicial  
808 review in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Such review shall extend  
809 to the entire evidential record of the proceedings provided by the Board in accordance with the  
810 Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court.  
811 Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended,  
812 stayed, or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus  
813 nor injunction shall lie in any such case.

814 **§ 3.2-4139. Grounds for which Board may suspend or revoke licenses.**

815 The Board may suspend or revoke any license if it has reasonable cause to believe that:

816 1. The licensee, or if the licensee is a business entity, any officer, director, manager, or general  
817 partner of the business entity:

818 a. Has misrepresented a material fact in applying to the Board for such license;

819 b. Within the five years immediately preceding the date of the hearing held in accordance with §  
820 3.2-4138, has (i) been convicted of a violation of any law, ordinance, or regulation of the  
821 Commonwealth or other political subdivision thereof, of any state, or of the United States or other  
822 political subdivision thereof applicable to the cultivation, manufacture, sale, or testing of marijuana or  
823 marijuana products; (ii) violated any provision of Article 7 (§ 3.2-4164 et seq.); (iii) violated or failed  
824 or refused to comply with any regulation or order of the Board; or (iv) failed or refused to comply with  
825 any of the conditions or restrictions of the license granted by the Board;

826 c. Has been convicted in any court of a felony under the laws of any state or of the Commonwealth  
827 after the date of initial licensure;

828 d. Is not the legitimate owner of the business conducted under the license granted by the Board, or  
829 other persons have ownership interests in the business that have not been disclosed;

830 e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business  
831 conducted under the license granted by the Board;

832 f. Has maintained the licensed premises in an unsanitary condition;

833 g. Knowingly employs in the business conducted under such license any person, as agent or  
834 employee, who has been convicted in any court of a felony within one and one-half years prior to the  
835 commencement of such employment or who has not completed all terms of sentencing and probation  
836 resulting from any such felony conviction;

837 h. Has allowed any person to consume upon the licensed premises any marijuana or marijuana  
838 products except as provided under this chapter; or

839 i. Has upon the licensed premises (i) illegally possessed, distributed, sold, or used, or has knowingly  
840 allowed any employee or agent, or any other person, to illegally possess, distribute, sell, or use  
841 controlled substances, imitation controlled substances, drug paraphernalia, or controlled paraphernalia  
842 as those terms are defined in Articles 1 (§ 18.2-247 et seq.) and 1.1 (§ 18.2-265.1 et seq.) of Chapter 7  
843 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of §  
844 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Article 1 or 1.1 of  
845 Chapter 7 of Title 18.2 or the Drug Control Act. The provisions of this subdivision shall also apply to  
846 any conduct related to the operation of the licensed business that facilitates the commission of any of  
847 the offenses set forth herein.

848 2. The place occupied by the licensee:

849 a. Does not conform to the requirements of the governing body of the county, city, or town in which  
850 such establishment is located, with respect to sanitation, health, construction, or equipment or to any  
851 similar requirements established by the laws of the Commonwealth or by Board regulations; or

852 b. Has been adjudicated a common nuisance under § 18.2-258.

853 **§ 3.2-4140. Grounds for which Board shall suspend or revoke licenses.**

854 The Board shall suspend or revoke any license if it finds that a licensee has defrauded or attempted  
855 to defraud the Board, or any federal, state, or local government or governmental agency or authority,  
856 by making or filing any report, document, or tax return required by statute or regulation that is  
857 fraudulent or contains a willful or knowing false representation of a material fact or has willfully  
858 deceived or attempted to deceive the Board, or any federal, state, or local government or governmental

agency or authority, by making or maintaining business records required by statute or regulation that are false or fraudulent.

**§ 3.2-4141. Suspension or revocation of licenses; notice and hearings; imposition of penalties.**

A. Before the Board may suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 2.2-4020 of the Administrative Process Act.

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § 3.2-4122 shall provide for the production of the documents sought within 10 working days, notwithstanding anything to the contrary in § 3.2-4122.

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any items the licensee would have lawfully been entitled to inspect or copy under this section.

The action of the Board in suspending or revoking any license shall be subject to judicial review in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed, or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license, the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose and collect such civil penalties as it deems appropriate. In no event shall the Board impose a civil penalty exceeding \$2,000 for the first violation occurring within five years immediately preceding the date of the violation or \$5,000 for a second or subsequent violation occurring within five years immediately preceding the date of the second or subsequent violation. However, if the violation involved selling marijuana or marijuana products to a person prohibited from purchasing marijuana or marijuana products or allowing consumption of marijuana or marijuana products by underage or intoxicated persons, the Board may impose a civil penalty not to exceed \$3,000 for the first violation occurring within five years immediately preceding the date of the violation and \$6,000 for a second or subsequent violation occurring within five years immediately preceding the date of the second or subsequent violation in lieu of such suspension or any portion thereof, or both. Upon making a finding that aggravating circumstances exist, the Board may also impose a requirement that the licensee pay for the cost incurred by the Board not exceeding \$10,000 in investigating the licensee and in holding the proceeding resulting in the violation in addition to any suspension or civil penalty incurred.

C. Following notice to (i) the licensee of a hearing that may result in the suspension or revocation of his license or (ii) the applicant of a hearing to resolve a contested application, the Board may accept a consent agreement as authorized in subdivision 2 of § 3.2-4122. The notice shall advise the licensee or applicant of the option to (a) admit the alleged violation or the validity of the objection; (b) waive any right to a hearing or an appeal under the Administrative Process Act (§ 2.2-4000 et seq.); and (c) either (1) accept the proposed restrictions for operating under the license, (2) accept the period of suspension of the licensed privileges within the Board's parameters, (3) pay a civil penalty in lieu of the period of suspension, or any portion of the suspension as applicable, or (4) proceed to a hearing.

D. The Board shall, by regulation or written order:

1. Designate those (i) objections to an application or (ii) alleged violations that will proceed to an initial hearing;

2. Designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation;

3. Establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a license and the civil charge acceptable in lieu of such suspension; and

4. Establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years immediately preceding the date of the violation.



920 No waiver shall be granted by the Board, however, for a licensee's willful and knowing violation of this  
921 chapter or Board regulations.

922 **§ 3.2-4142. Marijuana cultivation facility license.**

923 A. The Board may issue any of the following marijuana cultivation facility licenses, which shall  
924 authorize the licensee to purchase marijuana plants and seeds from other marijuana cultivation  
925 facilities; to cultivate, label, and package retail marijuana on premises approved by the Board; to  
926 transfer possession of its retail marijuana to marijuana secure transporters; to sell retail marijuana to  
927 marijuana manufacturing facilities, to retail marijuana stores, and to other marijuana cultivation  
928 facilities; and to sell marijuana plants and seeds to other marijuana cultivation facilities and immature  
929 marijuana plants and seedlings to retail marijuana stores:

930 1. Class A cultivation facility license, which shall authorize the licensee to cultivate not more than  
931 100 marijuana plants;

932 2. Class B cultivation facility license, which shall authorize the licensee to cultivate not more than  
933 500 marijuana plants; or

934 3. Class C cultivation facility license, which shall authorize the licensee to cultivate not more than  
935 2,000 marijuana plants.

936 B. In accordance with the requirements of § 3.2-4127, a marijuana cultivation facility licensee shall  
937 track the retail marijuana it cultivates from immature marijuana plant to the point at which the  
938 marijuana plant or the marijuana produced by the marijuana plant is delivered or transferred to a  
939 marijuana secure transporter, a marijuana manufacturing facility, a marijuana testing facility, a retail  
940 marijuana store, or another marijuana cultivation facility, or is disposed of or destroyed.

941 **§ 3.2-4143. Marijuana manufacturing facility license.**

942 A. The Board may issue marijuana manufacturing facility licenses, which shall authorize the licensee  
943 to purchase retail marijuana from a marijuana cultivation facility or another marijuana manufacturing  
944 facility; to manufacture, label, and package retail marijuana and retail marijuana products on premises  
945 approved by the Board; to transfer possession of its retail marijuana and retail marijuana products to  
946 marijuana secure transporters; and to sell retail marijuana and retail marijuana products to retail  
947 marijuana stores and to other marijuana manufacturing facilities.

948 B. Retail marijuana products shall be prepared on a licensed premises that is used exclusively for  
949 the manufacture and preparation of retail marijuana or retail marijuana products and using equipment  
950 that is used exclusively for the manufacture and preparation of retail marijuana products.

951 C. All areas within the licensed premises of a marijuana manufacturing facility in which adult-use  
952 marijuana and adult-use marijuana products are manufactured shall meet all sanitary standards  
953 specified in regulations adopted by the Board.

954 D. In accordance with the requirements of § 3.2-4127, a marijuana manufacturing facility licensee  
955 shall track the retail marijuana it uses in its manufacturing processes from the point the retail  
956 marijuana is delivered or transferred to the marijuana manufacturing facility by a marijuana cultivation  
957 facility to the point the retail marijuana or retail marijuana products produced using the retail  
958 marijuana are delivered or transferred to a marijuana secure transporter, another marijuana  
959 manufacturing facility, a marijuana testing facility, or a retail marijuana store or are disposed of or  
960 destroyed.

961 **§ 3.2-4144. Marijuana secure transporter license.**

962 A. The Board may issue marijuana secure transporter licenses, which shall authorize the licensee to  
963 obtain retail marijuana or retail marijuana products from a marijuana establishment and transport such  
964 marijuana to another marijuana establishment on behalf of the marijuana establishment.

965 A marijuana secure transporter may not hold title to retail marijuana or retail marijuana products.

966 B. In accordance with the requirements of § 3.2-4127, a marijuana secure transporter licensee shall  
967 track the retail marijuana or retail marijuana products that it receives from a marijuana establishment  
968 to the point at which such retail marijuana or retail marijuana products are delivered or transferred to  
969 the recipient retail marijuana establishment.

970 **§ 3.2-4145. Marijuana testing facility license.**

971 A. The Board may issue marijuana testing facility licenses, which shall authorize the licensee to  
972 develop, research, and test retail marijuana, retail marijuana products, and other substances.

973 B. A marijuana testing facility may develop, research, and test retail marijuana and retail marijuana  
974 products for (i) that facility, (ii) another licensee, or (iii) a person who intends to use the marijuana or  
975 marijuana product for personal use as authorized under § 3.2-4161.

976 C. Neither this chapter nor the regulations adopted pursuant to this chapter shall prevent a  
977 marijuana testing facility from developing, researching, or testing substances that are not marijuana or  
978 marijuana products for that facility or for another person.

979 D. To obtain licensure from the Board, a marijuana testing facility shall be required to obtain and  
980 maintain accreditation pursuant to standard ISO/IEC 17025 of the International Organization for  
981 Standardization by a third-party accrediting body.



E. In accordance with the requirements of § 3.2-4127, a marijuana testing facility licensee shall track all adult-use marijuana and adult-use marijuana products it receives from a licensee for testing purposes from the point at which the marijuana or marijuana products are delivered or transferred to the marijuana testing facility to the point at which the marijuana or marijuana products are disposed of or destroyed.

F. A person that has an interest in a marijuana testing facility license shall not have any interest in a licensed marijuana cultivation facility, a licensed marijuana products manufacturer, a licensed marijuana secure transporter, a licensed retail marijuana store, or a licensed marijuana microbusiness. A person that has an interest in a licensed marijuana cultivation facility, a licensed marijuana products manufacturer, a licensed marijuana secure transporter, a licensed retail marijuana store, or a licensed marijuana microbusiness shall not have an interest in a facility that has a marijuana testing facility license.

**§ 3.2-4146. Retail marijuana store license.**

A. The Board may issue retail marijuana store licenses, which shall authorize the licensee to purchase retail marijuana, immature marijuana plants, and seedlings from a marijuana cultivation facility; to purchase retail marijuana and retail marijuana products from a marijuana manufacturing facility; to receive possession of retail marijuana and retail marijuana products from marijuana secure transporters; and to sell retail marijuana, retail marijuana products, immature marijuana plants, flowering marijuana plants, and seedlings to consumers on premises approved by the Board.

B. Retail marijuana stores shall be operated in accordance with the following provisions:

1. A person shall be 21 years of age or older to make a purchase in a retail marijuana store.

2. A retail marijuana store shall be permitted to sell retail marijuana, retail marijuana products, immature marijuana plants, flowering marijuana plants, and seedlings to consumers only in a direct, face-to-face exchange. Such store shall not be permitted to sell marijuana, marijuana products, immature marijuana plants, flowering marijuana plants, and seedlings using:

a. An automated dispensing or vending machine;

b. A drive-through sales window;

c. An Internet-based sales platform; or

d. A delivery service.

3. A retail marijuana store shall not be permitted to sell more than the following during a single transaction to one person:

a. Two and one-half ounces of retail marijuana;

b. Sixteen ounces of solid marijuana product;

c. Seventy-two ounces of liquid marijuana product;

d. Twelve immature marijuana plants; and

e. Six flowering marijuana plants.

However, a retail marijuana store shall be permitted to sell unlimited seedlings to one person during a single transaction.

4. A retail marijuana store may sell any other consumable or nonconsumable products that it is otherwise permitted by law to sell, excluding tobacco or alcohol.

5. A retail marijuana store shall not:

a. Give away any retail marijuana, retail marijuana products, immature marijuana plants, flowering marijuana plants, or seedlings; or

b. Sell retail marijuana, retail marijuana products, immature marijuana plants, flowering marijuana plants, or seedlings to any person when at the time of such sale he knows or has reason to believe that the person to whom the sale is made is intoxicated.

6. In accordance with the requirements of § 3.2-4127, a retail marijuana store licensee shall track all retail marijuana and retail marijuana products from the point at which the retail marijuana or retail marijuana products are delivered or transferred to the retail marijuana store by a marijuana secure transporter, a marijuana cultivation facility, or a marijuana manufacturing facility to the point at which the retail marijuana or retail marijuana products are sold to a consumer, transferred to a marijuana secure transporter, delivered or transferred to a marijuana testing facility, or disposed of or destroyed.

**§ 3.2-4147. Marijuana microbusiness license.**

The Board may issue marijuana microbusiness licenses, which shall authorize the licensee to cultivate not more than 150 marijuana plants on premises approved by the Board; to manufacture, prepare, and package retail marijuana and retail marijuana products produced from such plants on such premises; and to sell such retail marijuana and retail marijuana products on such premises.

**§ 3.2-4148. To whom privileges conferred by licenses extend; liability for violations of law.**

The privilege of any licensee to sell marijuana or marijuana products shall extend to such licensee and to all agents or employees of such licensee for the purpose of selling marijuana or marijuana products under such license. The licensee may be held liable for any violation of this chapter or any

Board regulation committed by such agents or employees in connection with their employment.

**§ 3.2-4149. Use or consumption of marijuana or marijuana products on premises of licensee by licensee, agent, or employee.**

No marijuana or marijuana products may be used or consumed on the premises of a licensee by the licensee or any agent or employee of the licensee, except for certain sampling for quality control purposes that may be permitted by Board regulation.

#### Article 3.

##### Local Regulation of Marijuana Establishments.

**§ 3.2-4150. Local regulation of marijuana establishments generally; civil penalty.**

A. This chapter shall not be interpreted to supersede or limit the authority of a locality to adopt and enforce local ordinances to regulate businesses licensed under this chapter, including local zoning and land use requirements and business license requirements, to completely prohibit the establishment or operation of one or more types of businesses licensed under this chapter within the locality, or to limit the number of one or more types of businesses licensed under this chapter that may operate within the locality.

B. The qualified voters of a locality may petition for the initiation of an ordinance completely prohibiting the establishment or operation of one or more types of businesses licensed under this chapter within the locality or limiting the number of one or more types of businesses licensed under this chapter that may operate within the locality. The petition shall be signed by qualified voters equal in number to at least 10 percent of the number registered in the locality on January 1 preceding its filing or at least 100 qualified voters, whichever is greater.

C. If a locality chooses to permit the establishment or operation of one or more types of businesses licensed under this chapter within the locality, the locality may adopt an ordinance providing licensing requirements applicable to marijuana establishments within the locality, which may include provisions establishing a local license fee schedule to defray application, administrative, and enforcement costs associated with the operation of the marijuana establishment in the locality, provided that no such license fee shall exceed \$5,000 per year.

D. The locality may provide in any ordinance regulating marijuana establishments that if a person violates any or certain provisions of the ordinance, such person shall be subject to a civil penalty, provided that no such civil penalty shall exceed \$500 per violation. Such civil penalties are payable to the Literary Fund.

**§ 3.2-4151. Use or consumption of marijuana or marijuana products on premises of licensed retail marijuana store.**

In accordance with the provisions of § 3.2-4166, a locality may allow for the use or consumption of marijuana or marijuana products on the premises of a licensed retail marijuana store or at special events in limited areas and for a limited time if:

1. Access to the area where marijuana or marijuana product use or consumption is allowed is restricted to persons 21 years of age or older;

2. Marijuana or marijuana product use or consumption is not visible from any public place or non-age-restricted area; and

3. The sale or consumption of alcohol and tobacco is not permitted on the premises.

**§ 3.2-4152. Prohibited ordinances.**

A locality may not adopt a local ordinance that (i) restricts the transportation of retail marijuana or retail marijuana products through the locality, (ii) conflicts with the provisions of this chapter or regulations adopted by the Board, or (iii) is unreasonably impracticable.

#### Article 4.

##### Health and Safety Requirements.

**§ 3.2-4153. Board to establish regulations for marijuana testing.**

Subject to the requirements of § 3.2-4154, the Board shall establish a testing program for marijuana and marijuana products. Except as otherwise provided in this article or otherwise provided by law, the program shall require a licensee, prior to selling or distributing retail marijuana or a retail marijuana product to a consumer or to another licensee, to submit a representative sample of the retail marijuana or retail marijuana product, not to exceed 10 percent of the total harvest or batch, to a licensed marijuana testing facility for testing to ensure that the retail marijuana or retail marijuana product does not exceed the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required and to ensure correct labeling. The Board shall adopt regulations (i) establishing a testing program pursuant to this section; (ii) establishing acceptable testing and research practices, including regulations relating to testing practices, methods, and standards; quality control analysis; equipment certification and calibration; marijuana testing facility recordkeeping, documentation, and business practices; disposal of used, unused, and waste retail marijuana and retail marijuana products; and reporting of test results; (iii) identifying the types of contaminants that are injurious to health for which retail marijuana and retail marijuana products shall be tested under this

article; and (iv) regarding the maximum level of allowable contamination for each contaminant.

**§ 3.2-4154. Mandatory testing; scope; recordkeeping; notification; additional testing not required; required destruction.**

A. A licensee may not sell or distribute retail marijuana or a retail marijuana product to a consumer or to another licensee under this chapter unless a representative sample of the retail marijuana or retail marijuana product has been tested pursuant to this article and the regulations adopted pursuant to this article and that mandatory testing has demonstrated that (i) the retail marijuana or retail marijuana product does not exceed the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required and (ii) the labeling on the retail marijuana or retail marijuana product is correct.

B. Mandatory testing of retail marijuana and retail marijuana products under this section shall include testing for:

1. Residual solvents, poisons, and toxins;
2. Harmful chemicals;
3. Dangerous molds and mildew;
4. Harmful microbes, including but not limited to *Escherichia coli* and *Salmonella*;
5. Pesticides, fungicides, and insecticides; and
6. THC potency, homogeneity, and cannabinoid profiles to ensure correct labeling.

Testing shall be performed on the final form in which the retail marijuana or retail marijuana product will be consumed.

C. A licensee shall maintain a record of all mandatory testing that includes a description of the retail marijuana or retail marijuana product provided to the marijuana testing facility, the identity of the marijuana testing facility, and the results of the mandatory test.

D. If the results of a mandatory test conducted pursuant to this section indicate that the tested retail marijuana or retail marijuana product exceeds the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required, the marijuana testing facility shall immediately quarantine, document, and properly destroy the retail marijuana or retail marijuana product, and within 30 days of completing the test shall notify the Department of the test results.

A marijuana testing facility is not required to notify the Department of the results of any test:

1. Conducted on retail marijuana or a retail marijuana product at the direction of a licensee pursuant to this section that demonstrates that the marijuana or marijuana product does not exceed the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required;
2. Conducted on retail marijuana or a retail marijuana product at the direction of a licensee for research and development purposes only, so long as the licensee notifies the marijuana testing facility prior to the performance of the test that the testing is for research and development purposes only; or
3. Conducted on retail marijuana or a retail marijuana product at the direction of a person who is not a licensee.

E. Notwithstanding the foregoing, a licensee may sell or furnish to a consumer or to another licensee retail marijuana or a retail marijuana product that the licensee has not submitted for testing in accordance with this article and regulations adopted pursuant to this article if the following conditions are met:

1. The retail marijuana or retail marijuana product has previously undergone testing in accordance with this article and regulations adopted pursuant to this article at the direction of another licensee and that testing demonstrated that the retail marijuana or retail marijuana product does not exceed the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required;

2. The mandatory testing process and the test results for the retail marijuana or retail marijuana product are documented in accordance with the requirements of this article and all applicable regulations adopted pursuant to this article;

3. Tracking from immature marijuana plant to the point of retail sale has been maintained for the retail marijuana or retail marijuana product and transfers of the retail marijuana or retail marijuana product to another licensee or to a consumer can be easily identified; and

4. Since the performance of the prior testing under subsection A, the retail marijuana or retail marijuana product has not undergone any further processing, manufacturing, or alteration.

F. Licensees shall be required to destroy harvested batches of retail marijuana or batches of retail marijuana products whose testing samples indicate noncompliance with the health and safety standards required by this article and the regulations adopted by the Board pursuant to this article, unless remedial measures can bring the retail marijuana or retail marijuana products into compliance with such required health and safety standards.

**§ 3.2-4155. Labeling and packaging requirements; prohibitions.**

1166 A. Retail marijuana and retail marijuana products to be sold or offered for sale by a licensee to a  
1167 consumer in accordance with the provisions of this chapter shall be labeled with the following  
1168 information:

1169 1. Identification of the type of marijuana or marijuana product and the date of cultivation,  
1170 manufacturing, and packaging;

1171 2. The license numbers of the marijuana cultivation facility, the marijuana manufacturing facility,  
1172 and the retail marijuana store where the retail marijuana or retail marijuana product was cultivated,  
1173 manufactured, and offered for sale, as applicable;

1174 3. A statement of the net weight of the retail marijuana or retail marijuana product;

1175 4. Information concerning (i) pharmacologically active ingredients, including tetrahydrocannabinol  
1176 (THC), cannabidiol (CBD), and other cannabinoid content; (ii) the THC and other cannabinoid amount  
1177 in milligrams per serving, the total servings per package, and the THC and other cannabinoid amount  
1178 in milligrams for the total package; and (iii) the potency of the THC and other cannabinoid content;

1179 5. Information on gases, solvents, and chemicals used in marijuana extraction, if applicable;

1180 6. Instructions on usage;

1181 7. For retail marijuana products, (i) a list of ingredients and possible allergens and (ii) a  
1182 recommended use by date or expiration date;

1183 8. For edible retail marijuana products, a nutritional fact panel;

1184 9. The following statements, prominently displayed in bold print and in a clear and legible fashion:

1185 a. For retail marijuana: "GOVERNMENT WARNING: THIS PACKAGE CONTAINS MARIJUANA.  
1186 KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA MAY ONLY BE POSSESSED  
1187 OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER. MARIJUANA USE WHILE  
1188 PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF MARIJUANA IMPAIRS  
1189 YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

1190 b. For retail marijuana products: " GOVERNMENT WARNING: THIS PACKAGE CONTAINS  
1191 MARIJUANA. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA PRODUCTS  
1192 MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER.  
1193 MARIJUANA USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION  
1194 OF MARIJUANA IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE  
1195 EXTREME CAUTION."; and

1196 10. Any other information required by Board regulations.

1197 B. Retail marijuana and retail marijuana products to be sold or offered for sale by a licensee to a  
1198 consumer in accordance with the provisions of this chapter shall be packaged in the following manner:

1199 1. Retail marijuana and retail marijuana products shall be prepackaged in child-resistant,  
1200 tamper-evident, and resealable packaging that is opaque or shall be placed at the final point of sale to  
1201 a consumer in child-resistant, tamper-evident, and resealable packaging that is opaque;

1202 2. Packaging for multiserving liquid marijuana products shall include an integral measurement  
1203 component; and

1204 3. Packaging shall comply with any other requirements imposed by Board regulations.

1205 C. Retail marijuana and retail marijuana products to be sold or offered for sale by a licensee to a  
1206 consumer in accordance with the provisions of this chapter shall not:

1207 1. Be labeled or packaged in violation of a federal trademark law or regulation;

1208 2. Be labeled or packaged in a manner that is specifically designed to appeal particularly to persons  
1209 under 21 years of age;

1210 3. Be labeled or packaged in a manner that obscures identifying information on the label;

1211 4. Be labeled or packaged using a false or misleading label;

1212 5. Be sold or offered for sale using a label or packaging that depicts a human, an animal, or fruit;  
1213 and

1214 6. Be labeled or packaged in violation of any other labeling or packaging requirements imposed by  
1215 Board regulations.

1216 **§ 3.2-4156. Advertising and marketing restrictions.**

1217 A. As used in this section, unless the context requires a different meaning:

1218 "Advertisement" includes any written or verbal statement, illustration, or depiction that is calculated  
1219 to induce sales of retail marijuana or retail marijuana products, including any written, printed, graphic,  
1220 or other material, billboard, sign, or other outdoor display, publication, or radio or television  
1221 broadcast.

1222 "Health-related statement" means any statement related to health and includes statements of a  
1223 curative or therapeutic nature that, expressly or by implication, suggest a relationship between the  
1224 consumption of retail marijuana or retail marijuana products and health benefits or effects on health.

1225 "Market" or "marketing" means any act or process of promoting or selling retail marijuana or retail  
1226 marijuana products, including point-of-sale advertising, and development of products specifically  
1227 designed to appeal to certain demographics.

*B. No person shall advertise in or send any advertising matter into the Commonwealth about or concerning retail marijuana or retail marijuana products other than those that may be legally manufactured in the Commonwealth under this chapter or Article 4.2 (§ 54.1-3442.5 et seq.) of Chapter 34 of Title 54.1.*

*C. Advertising or marketing used by or on behalf of a licensee:*

*1. Shall accurately and legibly identify the licensee responsible for its content by adding, at a minimum, the licensee's license number;*

*2. Shall not be misleading, deceptive, or false;*

*3. Shall not have a high likelihood of reaching persons under 21 years of age and shall not be designed to appeal particularly to persons under 21 years of age; and*

*4. Shall comply with any other provisions imposed by Board regulations.*

*D. Any advertising or marketing involving direct, individualized communication or dialogue controlled by the licensee shall utilize a method of age affirmation to verify that the recipient is 21 years of age or older before engaging in that communication or dialogue controlled by the licensee. For purposes of this subsection, that method of age affirmation may include user confirmation, birth date disclosure, or any other similar registration method.*

*E. A licensee shall not give away any amount of retail marijuana or retail marijuana products, or any marijuana accessories, as part of a business promotion or other commercial activity.*

*F. A licensee shall not include on the label of any retail marijuana or retail marijuana product or publish or disseminate advertising or marketing containing any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of marijuana consumption.*

*G. All outdoor advertising of retail marijuana or retail marijuana products shall comply with the following:*

*1. No outdoor retail marijuana or retail marijuana product advertising shall be placed within 1,000 linear feet on the same side of the road, and parallel to such road, measured from the nearest edge of the sign face upon which the advertisement is placed to the nearest edge of a building or structure located on the real property of (i) a church, synagogue, mosque, or other place of religious worship; (ii) a public, private, or parochial school or an institution of higher education; (iii) a public or private playground or similar recreational facility; or (iv) a dwelling used for residential use. However, if there is no building or structure on a playground or similar recreational facility, the measurement shall be from the nearest edge of the sign face upon which the advertisement is placed to the property line of such playground or similar recreational facility.*

*2. If, at the time the advertisement was displayed, the advertisement was more than 1,000 feet from (i) a church, synagogue, mosque, or other place of religious worship; (ii) a public, private, or parochial school or an institution of higher education; (iii) a public or private playground or similar recreational facility; or (iv) a dwelling used for residential use, but the circumstances changed such that the advertiser would otherwise be in violation of subdivision 1, the Board shall permit the advertisement to remain as displayed for the remainder of the term of any written advertising contract, but in no event more than one year from the date of the change in circumstances.*

*3. The Board may grant a permit authorizing a variance from the distance requirements of this subsection upon a finding that the placement of retail marijuana and retail marijuana product advertising on a sign will not unduly expose persons under 21 years of age to marijuana and marijuana product advertising.*

*4. Provided such signs are in compliance with local ordinances, the distance and zoning requirements contained in this section shall not apply to signs placed by licensees upon the property on which the licensed premises is located.*

*5. Nothing in this section shall be construed to authorize billboard signs containing retail marijuana or retail marijuana product advertising on property zoned agricultural or residential, or on any unzoned property. Nor shall this section be construed to authorize the erection of new billboard signs containing retail marijuana or retail marijuana product advertising that would be prohibited under state law or local ordinance.*

*6. All lawfully erected outdoor retail marijuana or retail marijuana product signs shall comply with the provisions of this chapter, Board regulations, and Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 and regulations adopted pursuant thereto by the Commonwealth Transportation Board. Further, any outdoor retail marijuana or retail marijuana product directional sign located or to be located on highway rights-of-way shall also be governed by and comply with the Integrated Directional Signing Program administered by the Virginia Department of Transportation or its agents.*

*H. No licensee may sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entry or team in any event, in the brand name, logo, symbol, motto, or any other indicia of product identification identical or similar to, or identifiable with, those used for any*

1289 brand of retail marijuana or retail marijuana products.

1290 1. The provisions of this section shall not apply to noncommercial speech.

1291 **§ 3.2-4157. Other health and safety requirements for edible marijuana products; health and safety**  
1292 **regulations.**

1293 A. Requirements and restrictions for edible retail marijuana products. In addition to all other  
1294 applicable provisions of this article, edible marijuana products to be sold or offered for sale by a  
1295 licensee to a consumer in accordance with this chapter:

1296 1. Shall be manufactured in a manner that results in the cannabinoid content within the product  
1297 being homogeneous throughout the product or throughout each element of the product that has a  
1298 cannabinoid content;

1299 2. Shall be manufactured in a manner that results in the amount of marijuana concentrate within the  
1300 product being homogeneous throughout the product or throughout each element of the product that  
1301 contains marijuana concentrate;

1302 3. Shall have a universal symbol stamped or embossed on each serving of the product;

1303 4. Shall not contain more than 100 milligrams of tetrahydrocannabinol (THC) per serving of the  
1304 product and shall not contain more than 100 milligrams of THC per package of the product;

1305 5. Shall not contain additives that are:

1306 a. Toxic or harmful to human beings;

1307 b. Specifically designed to make the product more addictive;

1308 c. Misleading to consumers; or

1309 d. Specifically designed to make the product appeal particularly to persons under 21 years of age;  
1310 and

1311 6. Shall not involve the addition of marijuana to a trademarked food or drink product, except when  
1312 the trademarked product is used as a component of or ingredient in the edible retail marijuana product  
1313 and the edible retail marijuana product is not advertised or described for sale as containing the  
1314 trademarked product.

1315 B. Health and safety regulations. The Board shall adopt any additional labeling, packaging, or other  
1316 health and safety regulations that it deems necessary for retail marijuana and retail marijuana products  
1317 to be sold or offered for sale by a licensee to a consumer in accordance with this chapter. Regulations  
1318 adopted pursuant to this subsection shall establish mandatory health and safety standards applicable to  
1319 the cultivation of marijuana, the manufacture of retail marijuana products, and the packaging and  
1320 labeling of retail marijuana and retail marijuana products sold by a licensee to a consumer. Such  
1321 regulations shall address:

1322 1. Requirements for the storage, warehousing, and transportation of retail marijuana and retail  
1323 marijuana products by licensees;

1324 2. Sanitary standards for marijuana establishments, including sanitary standards for the manufacture  
1325 of retail marijuana and retail marijuana products; and

1326 3. Limitations on the display of retail marijuana and retail marijuana products at retail marijuana  
1327 stores.

#### 1328 Article 5.

#### 1329 Retail Marijuana Tax.

1330 **§ 3.2-4158. State marijuana tax.**

1331 A. As used in this article, "nontaxable entity" means a marijuana cultivation facility, a marijuana  
1332 testing facility, a marijuana manufacturing facility, or a marijuana secure transporter.

1333 B. In addition to all other taxes imposed by law, there shall be imposed a tax at a rate of 10 percent  
1334 on the retail sale, as defined in § 58.1-602, of marijuana and marijuana products from a retail  
1335 marijuana store or a marijuana microbusiness to any person other than a nontaxable entity.

1336 C. If a retail marijuana store or a marijuana microbusiness sells a product taxable under this  
1337 article, it shall sell such product either separately or only with other products taxable under this article.

1338 D. After the Department has funded its costs of implementing, administering, and enforcing this  
1339 chapter, the first \$20 million of tax revenue collected pursuant to this section in each fiscal year shall  
1340 accrue to the Veterans Treatment Fund established pursuant to § 3.2-4160. All tax revenue collected  
1341 pursuant to this section that exceeds such \$20 million shall be distributed as follows:

1342 1. Thirty percent to counties and cities where retail marijuana stores and marijuana microbusinesses  
1343 are located, allocated in proportion to the number of retail marijuana stores and marijuana  
1344 microbusinesses in such counties and cities;

1345 2. Thirty-five percent to the general fund to be used for the state's share of Standards of Quality  
1346 basic aid payments; and

1347 3. Thirty-five percent to the Commonwealth Mass Transit Fund established pursuant to subdivision A  
1348 4 of § 58.1-638.

1349 E. The Department of Taxation shall administer, collect, and distribute the taxes imposed pursuant to  
1350 this article in the same manner and subject to the same penalties as provided for the retail sales tax

under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1.

**§ 3.2-4159. County or city marijuana tax.**

A. Any county or city may impose a tax at a rate not to exceed five percent on the retail sale, as defined in § 58.1-602, of marijuana and marijuana products from a retail marijuana store or a marijuana microbusiness to any person other than a nontaxable entity.

B. A county or city may impose a tax pursuant to this section only if the tax is approved at referendum pursuant to § 24.2-684 and initiated either by a resolution of the governing body of the county or city or on the filing of a petition signed by at least 10 percent of the number of registered voters in the county or city as of January 1 of the year in which the petition is filed. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general circulation in the county or city once a week for three consecutive weeks prior to the referendum. If voters approve the county or city marijuana tax, it shall be effective at a rate and on such terms as the governing body may by ordinance prescribe. If the resolution of the governing body or the petition states for what purposes the revenues from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what purposes the revenues are to be used.

**§ 3.2-4160. Veterans Treatment Fund.**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Veterans Treatment Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose, all funds accruing to the Fund pursuant to § 3.2-4158, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of research in the medical treatment of veterans as specified in subsection B. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner or his designee.

B. Moneys in the Fund shall be used by the Department to provide grants to nonprofit organizations and institutions of higher education to research marijuana's effectiveness in treating the medical conditions of veterans of the United States Armed Forces and preventing the suicide of such veterans. The Department shall issue grants only to organizations and institutions that are conducting clinical trials for such research that have been approved by the U.S. Food and Drug Administration.

**Article 6.**

**Permitted Practices.**

**§ 3.2-4161. Possession, etc., of retail marijuana and retail marijuana products by persons 21 years of age or older lawful; civil penalty.**

A. Except as otherwise provided in this chapter and notwithstanding any other provision of law, a person 21 years of age or older may lawfully possess not more than two and one-half ounces of retail marijuana or retail marijuana products on his person, provided that not more than 15 grams of such marijuana may be in the form of marijuana concentrate.

Any person who violates the provisions of this section is subject to a civil penalty of not more than \$50, upon a second violation is subject to a civil penalty of not more than \$100, and upon a third or subsequent violation is subject to a civil penalty of not more than \$250. Such civil penalties are payable to the Literary Fund.

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

C. It shall be an affirmative defense to prosecution of an individual for the unlawful possession of retail marijuana or retail marijuana products pursuant to subsection A if:

1. Such individual, in good faith, seeks or obtains emergency medical attention for himself, if he is experiencing an overdose, or for another individual, if such other individual is experiencing an overdose, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system;

2. Such individual remains at the scene of the overdose or at any alternative location to which he or the person requiring emergency medical attention has been transported until a law-enforcement officer responds to the report of an overdose. If no law-enforcement officer is present at the scene of the overdose or at the alternative location, then such individual shall cooperate with law enforcement as otherwise set forth herein;

3. Such individual identifies himself to the law-enforcement officer who responds to the report of the



1412 overdose;

1413 4. If requested by a law-enforcement officer, such individual substantially cooperates in any  
1414 investigation of any criminal offense reasonably related to the controlled substance, alcohol, or  
1415 combination of such substances that resulted in the overdose; and

1416 5. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a  
1417 result of the individual seeking or obtaining emergency medical attention.

1418 No individual may assert the affirmative defense provided for in this subsection if the person sought  
1419 or obtained emergency medical attention for himself or another individual during the execution of a  
1420 search warrant or during the conduct of a lawful search or a lawful arrest.

1421 For purposes of this subsection, "overdose" means a life-threatening condition resulting from the  
1422 consumption or use of a controlled substance, alcohol, or any combination of such substances.

1423 D. Whenever any person who has not previously been convicted of any offense under this article or  
1424 under any statute of the United States or of any state relating to narcotic drugs, marijuana, or  
1425 stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for  
1426 violation of such an offense dismissed as provided in this subsection, pleads guilty to or enters a plea of  
1427 not guilty to possession of non-retail marijuana or non-retail marijuana products under subsection A,  
1428 the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering  
1429 a judgment of guilt and with the consent of the accused, may defer further proceedings and place him  
1430 on probation upon terms and conditions.

1431 As a term or condition, the court shall require the accused to undergo a substance abuse assessment  
1432 pursuant to § 19.2-299.2 and enter treatment or an education program or services, or any combination  
1433 thereof, if available, such as, in the opinion of the court, may be best suited to the needs of the accused  
1434 based upon consideration of the substance abuse assessment. The program or services may be located in  
1435 the judicial district in which the charge is brought or in any other judicial district as the court may  
1436 provide. The services shall be provided by (i) a program licensed by the Department of Behavioral  
1437 Health and Developmental Services, or a similar program that is made available through the  
1438 Department of Corrections, (ii) a local community-based probation services agency established pursuant  
1439 to § 9.1-174, or (iii) an alcohol safety action program (ASAP) certified by the Commission on the  
1440 Virginia Alcohol Safety Action Program (VASAP).

1441 The court shall require the person entering such program under the provisions of this section to pay  
1442 all or part of the costs of the program, including the costs of the screening, assessment, testing, and  
1443 treatment, based upon the accused's ability to pay, unless the person is determined by the court to be  
1444 indigent.

1445 As a condition of probation, the court shall require the accused (a) to successfully complete  
1446 treatment or education programs or services, (b) to remain drug and alcohol free during the period of  
1447 probation and submit to such tests during that period as may be necessary and appropriate to determine  
1448 if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain  
1449 employment, and (d) to comply with a plan of up to 24 hours of community service. Such testing shall  
1450 be conducted by personnel of the supervising probation agency or personnel of any program or agency  
1451 approved by the supervising probation agency.

1452 The court shall, unless done at arrest, order the accused to report to the original arresting  
1453 law-enforcement agency to submit to fingerprinting.

1454 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as  
1455 otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person  
1456 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without  
1457 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent  
1458 proceedings.

1459 When any juvenile is found to have committed a violation of subsection A, the disposition of the case  
1460 shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title  
1461 16.1.

1462 **§ 3.2-4162. Home cultivation, storage, manufacture, etc., of marijuana by persons 21 years of age**  
1463 **or older lawful; civil penalty.**

1464 A. Except as otherwise provided in this chapter and notwithstanding any other provision of law, a  
1465 person 21 years of age or older may lawfully:

1466 1. Cultivate up to 12 marijuana plants for personal use within such person's residence, provided that  
1467 no more than 12 total plants shall be cultivated or stored upon such premises at any one time; and

1468 2. Possess, store, and manufacture no more than 10 ounces of retail marijuana and retail marijuana  
1469 products within such person's residence, in addition to any marijuana produced by plants cultivated on  
1470 the premises pursuant to subdivision 1, provided that amounts in excess of two and one-half ounces  
1471 shall be stored in a container or area with locks or other security devices that restrict access to the  
1472 container or area. Any person who violates the provisions of this subdivision is subject to a civil penalty  
1473 of not more than \$50, upon a second violation is subject to a civil penalty of not more than \$100, and



upon a third or subsequent violation is subject to a civil penalty of not more than \$250. Such civil penalties are payable to the Literary Fund.

B. It shall be an affirmative defense to prosecution of an individual for the unlawful possession of retail marijuana or retail marijuana products pursuant to subdivision A 2 if:

1. Such individual, in good faith, seeks or obtains emergency medical attention for himself, if he is experiencing an overdose, or for another individual, if such other individual is experiencing an overdose, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system;

2. Such individual remains at the scene of the overdose or at any alternative location to which he or the person requiring emergency medical attention has been transported until a law-enforcement officer responds to the report of an overdose. If no law-enforcement officer is present at the scene of the overdose or at the alternative location, then such individual shall cooperate with law enforcement as otherwise set forth herein;

3. Such individual identifies himself to the law-enforcement officer who responds to the report of the overdose;

4. If requested by a law-enforcement officer, such individual substantially cooperates in any investigation of any criminal offense reasonably related to the controlled substance, alcohol, or combination of such substances that resulted in the overdose; and

5. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of the individual seeking or obtaining emergency medical attention.

No individual may assert the affirmative defense provided for in this subsection if the person sought or obtained emergency medical attention for himself or another individual during the execution of a search warrant or during the conduct of a lawful search or a lawful arrest.

For purposes of this subsection, "overdose" means a life-threatening condition resulting from the consumption or use of a controlled substance, alcohol, or any combination of such substances.

C. Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this subsection, pleads guilty to or enters a plea of not guilty to possession of non-retail marijuana or non-retail marijuana products under subdivision A 2, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 19.2-299.2 and enter treatment or an education program or services, or any combination thereof, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, or a similar program that is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an alcohol safety action program (ASAP) certified by the Commission on the Virginia Alcohol Safety Action Program (VASAP).

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

As a condition of probation, the court shall require the accused (a) to successfully complete treatment or education programs or services, (b) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a plan of up to 24 hours of community service. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

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

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

1535 *proceedings.*

1536 *When any juvenile is found to have committed a violation of subdivision A 2, the disposition of the*  
1537 *case shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title*  
1538 *16.1.*

1539 **§ 3.2-4163. Possession, use, manufacture, and sale of marijuana paraphernalia by persons 21**  
1540 **years of age or older lawful.**

1541 *Except as otherwise provided by law and notwithstanding any other provision of law, a person 21*  
1542 *years of age or older may possess, use, or manufacture marijuana paraphernalia. Additionally, such*  
1543 *persons may sell or distribute marijuana paraphernalia to persons 21 years of age or older in*  
1544 *accordance with the provisions of § 3.2-4179.*

1545 *Article 7.*

1546 *Prohibited Practices; Penalties; Procedural Matters.*

1547 **§ 3.2-4164. Possession or cultivation of retail marijuana and retail marijuana products by persons**  
1548 **under 21 years of age prohibited; penalty.**

1549 *A. It is unlawful for any person under 21 years of age to knowingly or intentionally possess retail*  
1550 *marijuana or retail marijuana products.*

1551 *For purposes of this section, ownership or occupancy of the premises or vehicle upon or in which*  
1552 *marijuana was found shall not create a presumption that such person either knowingly or intentionally*  
1553 *possessed such marijuana.*

1554 *Any person who violates this section by possessing two and one-half ounces or less of retail*  
1555 *marijuana or retail marijuana products or 12 or fewer marijuana plants is subject to a civil penalty of*  
1556 *not more than \$100. Any person who violates this section by possessing more than two and one-half*  
1557 *ounces of retail marijuana or retail marijuana products or more than 12 marijuana plants is subject to*  
1558 *a civil penalty of not more than \$500. Such civil penalties are payable to the Literary Fund.*

1559 *B. The provisions of this section shall not apply to members of federal, state, county, city, or town*  
1560 *law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as*  
1561 *handlers of dogs trained in the detection of controlled substances when possession of marijuana is*  
1562 *necessary for the performance of their duties.*

1563 *C. It shall be an affirmative defense to prosecution of an individual for the unlawful possession of*  
1564 *retail marijuana or retail marijuana products pursuant to subsection A if:*

1565 *1. Such individual, in good faith, seeks or obtains emergency medical attention for himself, if he is*  
1566 *experiencing an overdose, or for another individual, if such other individual is experiencing an*  
1567 *overdose, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102,*  
1568 *emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined*  
1569 *in § 9.1-101, or an emergency 911 system;*

1570 *2. Such individual remains at the scene of the overdose or at any alternative location to which he or*  
1571 *the person requiring emergency medical attention has been transported until a law-enforcement officer*  
1572 *responds to the report of an overdose. If no law-enforcement officer is present at the scene of the*  
1573 *overdose or at the alternative location, then such individual shall cooperate with law enforcement as*  
1574 *otherwise set forth herein;*

1575 *3. Such individual identifies himself to the law-enforcement officer who responds to the report of the*  
1576 *overdose; and*

1577 *4. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a*  
1578 *result of the individual seeking or obtaining emergency medical attention.*

1579 *No individual may assert the affirmative defense provided for in this subsection if the person sought*  
1580 *or obtained emergency medical attention for himself or another individual during the execution of a*  
1581 *search warrant or during the conduct of a lawful search or a lawful arrest.*

1582 *For purposes of this subsection, "overdose" means a life-threatening condition resulting from the*  
1583 *consumption or use of a controlled substance, alcohol, or any combination of such substances.*

1584 *D. Whenever any person who has not previously been convicted of any offense under this article or*  
1585 *under any statute of the United States or of any state relating to narcotic drugs, marijuana, or*  
1586 *stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for*  
1587 *violation of such an offense dismissed as provided in this subsection, pleads guilty to or enters a plea of*  
1588 *not guilty to possession of non-retail marijuana or non-retail marijuana products under subsection A,*  
1589 *the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering*  
1590 *a judgment of guilt and with the consent of the accused, may defer further proceedings and place him*  
1591 *on probation upon terms and conditions. If the court defers further proceedings, at that time the court*  
1592 *shall determine whether the clerk of court has been provided with the fingerprint identification*  
1593 *information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390,*  
1594 *and, if not, shall order that the fingerprints and photograph of the person be taken by a*  
1595 *law-enforcement officer.*

1596 *As a term or condition, the court shall require the accused to undergo a substance abuse assessment*

pursuant to § 19.2-299.2 and enter treatment or an education program or services, or any combination thereof, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, or by a similar program that is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an alcohol safety action program (ASAP) certified by the Commission on the Virginia Alcohol Safety Action Program (VASAP).

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

As a condition of probation, the court shall require the accused (a) to successfully complete treatment or education programs or services, (b) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a plan of up to 24 hours of community service. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

When any juvenile is found to have committed a violation of subsection A, the disposition of the case shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title 16.1.

**§ 3.2-4165. Possession of non-retail marijuana and non-retail marijuana products prohibited; penalty.**

A. It is unlawful for any person to knowingly or intentionally possess non-retail marijuana or non-retail marijuana products.

For purposes 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 Class 1 misdemeanor.

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

C. It shall be an affirmative defense to prosecution of an individual for the unlawful possession of non-retail marijuana or non-retail marijuana products pursuant to subsection A if:

1. Such individual, in good faith, seeks or obtains emergency medical attention for himself, if he is experiencing an overdose, or for another individual, if such other individual is experiencing an overdose, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system;

2. Such individual remains at the scene of the overdose or at any alternative location to which he or the person requiring emergency medical attention has been transported until a law-enforcement officer responds to the report of an overdose. If no law-enforcement officer is present at the scene of the overdose or at the alternative location, then such individual shall cooperate with law enforcement as otherwise set forth herein;

3. Such individual identifies himself to the law-enforcement officer who responds to the report of the overdose; and

4. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of the individual seeking or obtaining emergency medical attention.

No individual may assert the affirmative defense provided for in this section if the person sought or obtained emergency medical attention for himself or another individual during the execution of a search warrant or during the conduct of a lawful search or a lawful arrest.

For purposes of this subsection, "overdose" means a life-threatening condition resulting from the

1658 consumption or use of a controlled substance, alcohol, or any combination of such substances.

1659 D. Whenever any person who has not previously been convicted of any offense under this article or  
1660 under any statute of the United States or of any state relating to narcotic drugs, marijuana, or  
1661 stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for  
1662 violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of  
1663 not guilty to possession of non-retail marijuana or non-retail marijuana products under subsection A,  
1664 the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering  
1665 a judgment of guilt and with the consent of the accused, may defer further proceedings and place him  
1666 on probation upon terms and conditions. If the court defers further proceedings, at that time the court  
1667 shall determine whether the clerk of court has been provided with the fingerprint identification  
1668 information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390,  
1669 and, if not, shall order that the fingerprints and photograph of the person be taken by a  
1670 law-enforcement officer.

1671 As a term or condition, the court shall require the accused to undergo a substance abuse assessment  
1672 pursuant to § 19.2-299.2 and enter treatment or an education program or services, or any combination  
1673 thereof, if available, such as, in the opinion of the court, may be best suited to the needs of the accused  
1674 based upon consideration of the substance abuse assessment. The program or services may be located in  
1675 the judicial district in which the charge is brought or in any other judicial district as the court may  
1676 provide. The services shall be provided by (i) a program licensed by the Department of Behavioral  
1677 Health and Developmental Services, or by a similar program that is made available through the  
1678 Department of Corrections, (ii) a local community-based probation services agency established pursuant  
1679 to § 9.1-174, or (iii) an ASAP program certified by the Commission on the Virginia Alcohol Safety  
1680 Action Program (VASAP).

1681 The court shall require the person entering such program under the provisions of this section to pay  
1682 all or part of the costs of the program, including the costs of the screening, assessment, testing, and  
1683 treatment, based upon the accused's ability to pay, unless the person is determined by the court to be  
1684 indigent.

1685 As a condition of probation, the court shall require the accused (a) to successfully complete  
1686 treatment or an education program or services, (b) to remain drug and alcohol free during the period of  
1687 probation and submit to such tests during that period as may be necessary and appropriate to determine  
1688 if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain  
1689 employment, and (d) to comply with a plan of up to 24 hours of community service. Such testing shall  
1690 be conducted by personnel of the supervising probation agency or personnel of any program or agency  
1691 approved by the supervising probation agency.

1692 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as  
1693 otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of  
1694 court has been provided with the fingerprint identification or the fingerprints of such person, the court  
1695 shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this  
1696 section shall be without adjudication of guilt and is a conviction only for the purposes of applying this  
1697 section in subsequent proceedings.

1698 When any juvenile is found to have committed a violation of subsection A, the disposition of the case  
1699 shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title  
1700 16.1.

1701 **§ 3.2-4166. Public consumption prohibited; civil penalty.**

1702 A. Except as otherwise provided in this chapter and notwithstanding any other provision of law, a  
1703 person may use or consume retail marijuana or retail marijuana products only if that person is:

1704 1. In a private residence in which the person is domiciled, including the curtilage thereof;

1705 2. On private property on which the person is not domiciled, provided that such property is not  
1706 generally accessible by the public and the person is explicitly permitted to use or consume marijuana or  
1707 marijuana products on the property by the owner of the property;

1708 3. On the premises of a licensed retail marijuana store if such store has been permitted to allow the  
1709 use or consumption of marijuana or marijuana products in designated areas of the store by a locality  
1710 pursuant to § 3.2-4151; or

1711 4. On the premises of special events permitted by a locality pursuant to § 3.2-4151.

1712 B. A person who violates this section is subject to a civil penalty of not more than \$50, upon a  
1713 second violation is subject to a civil penalty of not more than \$100, and upon a third or subsequent  
1714 violation is subject to a civil penalty of not more than \$250. Such civil penalties are payable to the  
1715 Literary Fund.

1716 **§ 3.2-4167. Illegal cultivation or manufacture of marijuana or marijuana products; penalties.**

1717 A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) or pursuant to § 3.2-4162, it is  
1718 illegal for any person to cultivate or manufacture, or possess with intent to cultivate or manufacture,  
1719 marijuana or marijuana products without being licensed under this chapter to cultivate or manufacture

marijuana or marijuana products.

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

1. More than two and one-half ounces of marijuana or more than 12 marijuana plants but not more than five ounces of marijuana or 24 marijuana plants is subject to a civil penalty of not more than \$500, upon a second violation is subject to a civil penalty of not more than \$1,000, and upon a third or subsequent violation is subject to a civil penalty of not more than \$2,000. Such civil penalties are payable to the Literary Fund;

2. More than five ounces of marijuana or more than 24 marijuana plants but not more than five pounds of marijuana or 50 marijuana plants is guilty of a Class 1 misdemeanor;

3. More than five pounds of marijuana or more than 50 marijuana plants is guilty of a Class 6 felony.

**§ 3.2-4168. Conspiracy to violate § 3.2-4167; penalty.**

If two or more persons conspire together to do any act that is in violation of § 3.2-4167, and one or more of these persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty of a Class 6 felony.

**§ 3.2-4169. Illegal sale or distribution of marijuana and marijuana products; illegal possession with intent to sell or distribute marijuana or marijuana products; penalties.**

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be illegal for any person to sell or distribute, or possess with the intent to sell or distribute, marijuana or marijuana products without being licensed under this chapter to cultivate, manufacture, sell, or test retail marijuana or retail marijuana products.

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

1. Not more than two and one-half ounces of marijuana is guilty of a Class 1 misdemeanor;

2. More than two and one-half ounces but not more than five pounds of marijuana is guilty of a Class 6 felony;

3. More than five pounds of marijuana is guilty of a Class 5 felony.

C. 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 is guilty of a Class 4 felony.

**§ 3.2-4170. Illegal gift of marijuana or marijuana products; penalties.**

A. Except as otherwise provided by this chapter or otherwise provided by law, no person shall give retail or non-retail marijuana or retail or non-retail marijuana products to any person. Any person who violates this subsection is guilty of a Class 1 misdemeanor.

B. Any person who 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, is guilty of a Class 5 felony.

C. Notwithstanding the provisions of this section or § 3.2-4163, a non-licensee shall be permitted to give not more than two and one-half ounces of retail marijuana to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restrictions set forth in this section or § 3.2-4169.

**§ 3.2-4171. Distribution of non-retail marijuana to persons under 18 years of age prohibited; penalties.**

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute non-retail marijuana to any person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of non-retail marijuana. Any person violating this provision shall upon conviction be imprisoned in a state correctional facility for a period not less than 10 or more than 50 years, and fined not more than \$100,000. Five years of the sentence imposed for a conviction under this section involving two and one-half ounces or more of marijuana shall be a mandatory minimum sentence. Two years of the sentence imposed for a conviction under this section involving less than two and one-half ounces of marijuana shall be a mandatory minimum sentence.

**§ 3.2-4172. Illegal manufacturing, distribution, sale, etc., of a mixture or substance containing a detectable amount of non-retail marijuana; penalties.**

A. Any person who manufactures, sells, gives, distributes, or possesses with the intent to manufacture, sell, give, or distribute 100 kilograms or more of a mixture or substance containing a detectable amount of non-retail marijuana is guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence. Such mandatory minimum sentence shall not be applicable if the court finds that (i) the person

1781 does not have a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did  
1782 not use violence or credible threats of violence or possess a firearm or other dangerous weapon in  
1783 connection with the offense or induce another participant in the offense to do so; (iii) the offense did  
1784 not result in death or serious bodily injury to any person; (iv) the person was not an organizer, leader,  
1785 manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise  
1786 as defined in subsection I of § 18.2-248; and (v) not later than the time of the sentencing hearing, the  
1787 person has truthfully provided to the Commonwealth all information and evidence the person has  
1788 concerning the offense or offenses that were part of the same course of conduct or of a common scheme  
1789 or plan, but the fact that the person has no relevant or useful other information to provide or that the  
1790 Commonwealth is already aware of the information shall not preclude a determination by the court  
1791 that the defendant has complied with this requirement.

1792 B. Any person who was the principal or one of several principal administrators, organizers, or  
1793 leaders of a continuing criminal enterprise as defined in subsection I of § 18.2-248 is guilty of a felony  
1794 if (i) the enterprise received at least \$100,000 but less than \$250,000 in gross receipts during any  
1795 12-month period of its existence from the manufacture, importation, or distribution of marijuana or (ii)  
1796 the person engaged in the enterprise to manufacture, sell, give, distribute, or possess with the intent to  
1797 manufacture, sell, give, or distribute at least 100 kilograms but less than 250 kilograms of a mixture or  
1798 substance containing a detectable amount of marijuana during any 12-month period of its existence. A  
1799 conviction under this subsection shall be punishable by a fine of not more than \$1 million and  
1800 imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence.

1801 C. Any person who was the principal or one of several principal administrators, organizers, or  
1802 leaders of a continuing criminal enterprise as defined in subsection I of § 18.2-248 if (i) the enterprise  
1803 received \$250,000 or more in gross receipts during any 12-month period of its existence from the  
1804 manufacture, importation, or distribution of marijuana or (ii) the person engaged in the enterprise to  
1805 manufacture, sell, give, distribute, or possess with the intent to manufacture, sell, give, or distribute at  
1806 least 250 kilograms of a mixture or substance containing a detectable amount of marijuana during any  
1807 12-month period of its existence is guilty of a felony punishable by a fine of not more than \$1 million  
1808 and imprisonment for life, which shall be served with no suspension in whole or in part. Such  
1809 punishment shall be made to run consecutively with any other sentence. However, the court may impose  
1810 a mandatory minimum sentence of 40 years if the court finds that the defendant substantially cooperated  
1811 with law-enforcement authorities.

1812 **§ 3.2-4173. Manufacturing, distributing, and obtaining marijuana by fraud, deceit, or forgery;**  
1813 **penalties.**

1814 A. It is unlawful for any person to use in the course of the manufacture or distribution of marijuana  
1815 a license number that is fictitious, revoked, suspended, or issued to another person.

1816 B. It is unlawful for any person, for the purpose of obtaining marijuana, to falsely assume the title  
1817 of, or represent himself to be, a cultivator, manufacturer, wholesaler, retailer, tester, pharmacist,  
1818 physician, dentist, veterinarian, or other authorized person.

1819 C. Any person who violates any provision of this section is guilty of a Class 6 felony.

1820 Whenever any person who has not previously been convicted of any offense under this article or  
1821 under any statute of the United States or of any state relating to marijuana, or has not previously had a  
1822 proceeding against him for violation of such an offense dismissed, or reduced as provided in this  
1823 section, pleads guilty to or enters a plea of not guilty to the court for violating this section, upon such  
1824 plea if the facts found by the court would justify a finding of guilt, the court may place him on  
1825 probation upon terms and conditions.

1826 As a term or condition, the court shall require the accused to be evaluated and enter a treatment or  
1827 education program, if available, such as, in the opinion of the court, may be best suited to the needs of  
1828 the accused. This program may be located in the judicial circuit in which the charge is brought or in  
1829 any other judicial circuit as the court may provide. The services shall be provided by a program  
1830 certified or licensed by the Department of Behavioral Health and Developmental Services. The court  
1831 shall require the person entering such program under the provisions of this section to pay all or part of  
1832 the costs of the program, including the costs of the screening, evaluation, testing, and education, based  
1833 upon the person's ability to pay, unless the person is determined by the court to be indigent.

1834 As a condition of supervised probation, the court shall require the accused to remain drug free  
1835 during the period of probation and submit to such tests during that period as may be necessary and  
1836 appropriate to determine if the accused is drug free. Such testing may be conducted by the personnel of  
1837 any screening, evaluation, and education program to which the person is referred or by the supervising  
1838 agency.

1839 Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to  
1840 report to the original arresting law-enforcement agency to submit to fingerprinting.

1841 Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony  
1842 and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court

shall find the defendant guilty of a Class 1 misdemeanor.

**§ 3.2-4174. Prohibition on the sale or manufacture of marijuana or marijuana products on or near certain properties; penalties.**

A. It is unlawful for any person to manufacture, sell, or distribute or possess with intent to sell, give, or distribute marijuana or marijuana products while:

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

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

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

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

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

6. Upon the property of any state hospital as defined in § 37.2-100 or upon public property or property open to public use within 1,000 feet of such an institution.

It is a violation of the provisions of this section if the person possessed non-retail marijuana or non-retail marijuana products on the property described in subdivisions 1 through 6, regardless of where the person intended to sell, give, or distribute the non-retail marijuana or non-retail marijuana products.

B. A violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section is guilty of a Class 5 felony. However, if such person proves that he sold marijuana or marijuana products 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 or marijuana products to use or become addicted to or dependent upon such controlled substance or marijuana, he is guilty of a Class 1 misdemeanor.

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

**§ 3.2-4175. Possessing or displaying firearm while illegally manufacturing, etc., possessing with intent to manufacture, etc., more than one pound of marijuana; penalty.**

It is unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm, or to display such weapon in a threatening manner, while committing or attempting to commit the illegal manufacture, sale, or distribution or possessing with the intent to manufacture, sell, or distribute more than one pound of marijuana. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony, and any person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of five years. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

**§ 3.2-4176. Delivery of marijuana to prisoners or committed persons; penalty.**

Notwithstanding the provisions of § 18.2-474, any person who willfully in any manner delivers, attempts to deliver, or conspires with another to deliver marijuana to any prisoner confined under authority of the Commonwealth, or of any political subdivision thereof, or to any person committed to the Department of Juvenile Justice in any juvenile correctional center is guilty of a Class 5 felony.

**§ 3.2-4177. Transporting non-retail marijuana into the Commonwealth; penalty.**

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person to transport into the Commonwealth by any means with intent to sell or distribute five or more pounds of non-retail marijuana. A violation of this section shall constitute a separate and distinct felony. Upon conviction, the person shall be sentenced to not less than five years or more than 40 years imprisonment, three years of which shall be a mandatory minimum term of imprisonment, and a fine not to exceed \$1 million. A second or subsequent conviction hereunder shall be punishable by a mandatory minimum term of imprisonment of 10 years, which shall be served consecutively with any other sentence.

**§ 3.2-4178. Illegal testing of marijuana and marijuana products; penalty.**

Except as otherwise provided by this chapter or otherwise provided by law, no person shall test marijuana or marijuana products without being licensed under this chapter to cultivate or test marijuana or marijuana products. A person who violates this section is guilty of a Class 6 felony.

**§ 3.2-4179. Illegal sale or advertisement of marijuana paraphernalia; penalties.**

A. It is unlawful for any person under 21 years of age to possess marijuana paraphernalia. Any



1904 person who violates this section is subject to a civil penalty of not more than \$25. Such civil penalty is  
1905 payable to the Literary Fund.

1906 B. It is unlawful for any person to sell or distribute, or possess with the intent to sell or distribute,  
1907 marijuana paraphernalia to any person under 21 years of age. Any person who violates this subsection  
1908 is guilty of a Class 1 misdemeanor.

1909 C. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication  
1910 any advertisement, knowing or under circumstances where one reasonably should know, that the purpose  
1911 of the advertisement, in whole or in part, is to promote the sale of marijuana paraphernalia to persons  
1912 under 21 years of age. Any person who violates this subsection is guilty of a Class 1 misdemeanor.

1913 D. In determining whether an object is marijuana paraphernalia, the court may consider, in addition  
1914 to all other relevant evidence, the following:

- 1915 1. Constitutionally admissible statements by the accused concerning the use of the object;
- 1916 2. The proximity of the object to marijuana, which proximity is actually known to the accused;
- 1917 3. Instructions, oral or written, provided with the object concerning its use;
- 1918 4. Descriptive materials accompanying the object that explain or depict its use;
- 1919 5. National and local advertising within the actual knowledge of the accused concerning its use;
- 1920 6. The manner in which the object is displayed for sale;
- 1921 7. Whether the accused is a legitimate supplier of like or related items to the community, such as a  
1922 licensed distributor or dealer of tobacco products;

1923 8. Evidence of the ratio of sales of marijuana paraphernalia to the total sales of the business  
1924 enterprise;

1925 9. The existence and scope of legitimate uses for the object in the community;

1926 10. Expert testimony concerning its use or the purpose for which it was designed; and

1927 11. Relevant evidence of the intent of the accused to deliver it to persons who he knows, or should  
1928 reasonably know, are under 21 years of age. The innocence of an owner, or of anyone in control of the  
1929 object, as to a direct violation of this article shall not prevent a finding that the object is intended for  
1930 use or designed for use as drug paraphernalia.

1931 **§ 3.2-4180. Distribution, sale, or display of printed material advertising instruments for use in**  
1932 **administering marijuana to minors; penalty.**

1933 It is a Class 1 misdemeanor for any person knowingly to sell, distribute, or display for sale to a  
1934 minor any book, pamphlet, periodical, or other printed matter which he knows advertises for sale any  
1935 instrument, device, article, or contrivance for advertised use in unlawfully ingesting, smoking,  
1936 administering, preparing, or growing marijuana.

1937 **§ 3.2-4181. Persons to whom retail marijuana or retail marijuana products may not be sold; proof**  
1938 **of legal age; penalties.**

1939 A. No person shall sell any retail marijuana or retail marijuana products to any person when at the  
1940 time of such sale he knows or has reason to believe that the person to whom the sale is made is (i)  
1941 under 21 years of age or (ii) intoxicated. Any person who violates this subsection is guilty of a Class 1  
1942 misdemeanor.

1943 B. Any person who sells any retail marijuana or retail marijuana products to a person who is under  
1944 21 years of age and at the time of the sale does not require the person to present bona fide evidence of  
1945 legal age indicating that the person is 21 years of age or older is guilty of a violation of this  
1946 subsection. Bona fide evidence of legal age is limited to any evidence that is or reasonably appears to  
1947 be an unexpired driver's license issued by any state of the United States or the District of Columbia,  
1948 military identification card, United States passport or foreign government visa, unexpired special  
1949 identification card issued by the Department of Motor Vehicles, or any other valid government-issued  
1950 identification card bearing the individual's photograph, signature, height, weight, and date of birth, or  
1951 which bears a photograph that reasonably appears to match the appearance of the purchaser. A student  
1952 identification card shall not constitute bona fide evidence of legal age for purposes of this subsection.  
1953 Any person convicted of a violation of this subsection is guilty of a Class 3 misdemeanor.  
1954 Notwithstanding the provisions of § 3.2-4148, the Board shall not take administrative action against a  
1955 licensee for the conduct of his employee who violates this subsection.

1956 C. No person shall be convicted of both subsections A and B for the same sale.

1957 **§ 3.2-4182. Use or attempted use of altered, etc., identification to purchase retail marijuana or**  
1958 **retail marijuana products; penalty.**

1959 A. No person under 21 years of age shall use or attempt to use any (i) altered, fictitious, facsimile,  
1960 or simulated license to operate a motor vehicle; (ii) altered, fictitious, facsimile, or simulated document,  
1961 including but not limited to a birth certificate or student identification card; or (iii) motor vehicle  
1962 operator's license, birth certificate, or student identification card of another person in order to establish  
1963 a false identification or false age for himself to use, consume, or purchase or attempt to use, consume,  
1964 or purchase retail marijuana or retail marijuana products. Any person who violates this subsection is  
1965 guilty of a Class 1 misdemeanor.



B. Any retail marijuana store licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 3.2-4181.

**§ 3.2-4183. Purchasing retail marijuana or retail marijuana products for one to whom they may not be sold; penalty.**

Any person who (i) purchases retail marijuana or retail marijuana products for another person, and at the time of such purchase knows or has reason to believe that the person for whom the retail marijuana or retail marijuana products were purchased was intoxicated or (ii) purchases for or otherwise gives, provides, or assists in the provision of retail marijuana or retail marijuana products to another person when he knows or has reason to know that such person was under 21 years of age is guilty of a Class 1 misdemeanor.

**§ 3.2-4184. Prohibited practices by licensees; penalty.**

A. No licensee or any agent or employee of such licensee shall:

1. Cultivate, manufacture, transport, sell, or test any retail marijuana or retail marijuana products, as applicable, of a kind other than that which such license or this chapter authorizes him to cultivate, manufacture, transport, sell, or test;

2. Cultivate, manufacture, transport, sell, or test any retail marijuana or retail marijuana products, as applicable, which such license or this chapter authorizes him to cultivate, manufacture, transport, sell, or test, at any place other than such license or this chapter authorizes him to cultivate, manufacture, transport, sell, or test or in any place that is not within an enclosed area that is secured in a manner that prevents access by persons not permitted by the licensee or any agent or employee of such licensee to access such area;

3. Cultivate, manufacture, sell, or test any retail marijuana or retail marijuana products or display or sell any marijuana paraphernalia in any place that is visible from a public place outside of the marijuana establishment without the use of binoculars, aircraft, or other optical aids;

4. Allow a person under 21 years of age to be employed by or volunteer for such licensee; or

5. Sell retail marijuana or retail marijuana products without ensuring that the tax required by this chapter has been paid.

B. No marijuana cultivation facility licensee, marijuana manufacturing facility licensee, retail marijuana store, or marijuana microbusiness shall transport more than 15 ounces of retail marijuana or more than 60 grams of marijuana concentrate at one time.

C. Any person who violates this section is guilty of a Class 1 misdemeanor.

**§ 3.2-4185. Prohibited acts by retail marijuana store licensees; penalty.**

A. In addition to the actions prohibited by § 3.2-4184, no retail marijuana store licensee or any agent or employee of such licensee shall:

1. Sell any retail marijuana or retail marijuana product that such license or this chapter authorizes him to sell, but in a manner other than such license or this chapter authorizes him to sell;

2. Sell more than the amounts permitted by subdivision B 3 of § 3.2-4146 to be sold during a single transaction to one person;

3. Except as permitted by § 3.2-4151, allow at the place described in his license the use or consumption of retail marijuana or retail marijuana products in violation of this chapter.

4. Keep at the place described in his license any marijuana or marijuana products other than that which he is licensed to sell;

5. Misrepresent any marijuana or marijuana product sold or offered for sale;

6. Remove or obliterate any label or packaging affixed to any retail marijuana or retail marijuana products offered for sale;

7. Sell any retail marijuana or retail marijuana products if the label or packaging has been removed or obliterated;

8. Consume or allow the consumption by any employee of any retail marijuana or retail marijuana product while on duty and in a position that is involved in the selling of retail marijuana or retail marijuana products;

9. Be intoxicated while on duty or allow an employee to perform his duties while intoxicated; or

10. Fail or refuse to make samples of any retail marijuana or retail marijuana product available to the Board upon request.

B. Any person who violates this section is guilty of a Class 1 misdemeanor.

**§ 3.2-4186. Illegal labeling and packaging; penalty.**

Any person who violates the labeling and packaging requirements of § 3.2-4155 or the other health and safety requirements of § 3.2-4157 is guilty of a Class 1 misdemeanor.

**§ 3.2-4187. Illegal advertising and marketing; penalties.**

A. Except as provided in subsection B, any person who violates the advertising and marketing restrictions of § 3.2-4156 is guilty of a Class 1 misdemeanor.

2027 B. For violations of § 3.2-4156 relating to distance and zoning restrictions on outdoor advertising,  
2028 the Board shall give the advertiser written notice to take corrective action to either bring the  
2029 advertisement into compliance with this chapter and Board regulations or to remove such advertisement.  
2030 If corrective action is not taken within 30 days, the advertiser is guilty of a Class 4 misdemeanor.

2031 **§ 3.2-4188. Using or consuming marijuana or marijuana products while operating a motor vehicle**  
2032 **or while being a passenger in a motor vehicle; penalty.**

2033 A. It is unlawful for any person to use or consume marijuana or marijuana products while driving a  
2034 motor vehicle upon a public highway of the Commonwealth or while being a passenger in a motor  
2035 vehicle being driven upon a public highway of the Commonwealth.

2036 B. Any person who violates this section is guilty of a Class 4 misdemeanor.

2037 **§ 3.2-4189. Limitation on carrying marijuana or marijuana products in motor vehicles transporting**  
2038 **passengers for hire; penalty.**

2039 A. The transportation of marijuana or marijuana products in any motor vehicle that is being used, or  
2040 is licensed, for the transportation of passengers for hire is prohibited, except when carried in the  
2041 possession of a passenger who is being transported for compensation at the regular rate and fare  
2042 charged other passengers.

2043 B. Any person who violates this section is guilty of a Class 1 misdemeanor.

2044 **§ 3.2-4190. Using, consuming, or possessing marijuana or marijuana products in or on the**  
2045 **grounds of correctional facilities; penalty.**

2046 A. No person shall use, consume, or possess marijuana or marijuana products in or upon the  
2047 grounds of any state or local correctional facility as defined in § 53.1-1.

2048 B. Any person who violates this section is guilty of a Class 1 misdemeanor.

2049 **§ 3.2-4191. Using, consuming, or possessing marijuana or marijuana products in or on public**  
2050 **school grounds; penalty.**

2051 A. No person shall use, consume, or possess marijuana or marijuana products in or upon the  
2052 grounds of any public elementary or secondary school during or after school hours or school or student  
2053 activities.

2054 B. Any person convicted of a violation of this section is guilty of a Class 2 misdemeanor.

2055 **§ 3.2-4192. Using, consuming, or possessing marijuana or marijuana products while operating a**  
2056 **school bus; penalty.**

2057 Any person who possesses, uses, or consumes marijuana or marijuana products while operating a  
2058 school bus and transporting children is guilty of a Class 1 misdemeanor. For purposes of this section,  
2059 "school bus" has the same meaning as provided in § 46.2-100.

2060 **§ 3.2-4193. Separation of plant resin by butane extraction; penalty.**

2061 A. No person shall separate plant resin by butane extraction or another method that utilizes a  
2062 substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within  
2063 the curtilage of any residential structure.

2064 B. Any person convicted of a violation of this section is guilty of a Class 1 misdemeanor.

2065 **§ 3.2-4194. Certain premises deemed common nuisance; penalties.**

2066 Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse,  
2067 dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, that with the  
2068 knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or  
2069 tenant thereof, is frequented by persons under the influence of illegally obtained marijuana or for the  
2070 purpose of illegally obtaining possession of, manufacturing, or distributing marijuana, or is used for the  
2071 illegal possession, manufacture, or distribution of marijuana, shall be deemed a common nuisance. Any  
2072 such owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant who  
2073 knowingly permits, establishes, keeps, or maintains such a common nuisance is guilty of a Class 1  
2074 misdemeanor and for a second or subsequent offense is guilty of a Class 6 felony.

2075 **§ 3.2-4195. Maintaining a fortified drug house; penalty.**

2076 Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse,  
2077 dwelling house, apartment, or building or structure of any kind that is (i) substantially altered from its  
2078 original status by means of reinforcement with the intent to impede, deter, or delay lawful entry by a  
2079 law-enforcement officer into such structure; (ii) being used for the purpose of illegally manufacturing or  
2080 distributing marijuana; and (iii) the object of a valid search warrant shall be considered a fortified drug  
2081 house. Any person who maintains or operates a fortified drug house is guilty of a Class 5 felony.

2082 **§ 3.2-4196. Attempts; aiding or abetting; penalty.**

2083 No person shall attempt to do any of the things prohibited by this chapter or to aid or abet another  
2084 in doing, or attempting to do, any of the things prohibited by this chapter.

2085 On an indictment, information, or warrant for the violation of this chapter, the jury or the court may  
2086 find the defendant guilty of an attempt, or being an accessory, and the punishment shall be the same as  
2087 if the defendant were solely guilty of such violation.

2088 **§ 3.2-4197. Failure to deliver, keep, and preserve records and accounts, or to allow examination**

and inspection; penalty.

A. No licensee shall fail or refuse to (i) deliver, keep, and preserve such records, invoices, and accounts as are required by Board regulations or (ii) allow such records, invoices, and accounts or his place of business to be examined and inspected in accordance with Board regulations.

B. Any person who violates this section is guilty of a Class 1 misdemeanor.

**§ 3.2-4198. Disobeying subpoena; hindering conduct of hearing; penalty.**

A. No person shall (i) fail or refuse to obey any subpoena issued by the Board or any Board member or (ii) hinder the orderly conduct and decorum of any hearing held and conducted by the Board or a Board member.

B. Any person who violates this section is guilty of a Class 1 misdemeanor.

**§ 3.2-4199. Search warrants.**

A. If complaint on oath is made that marijuana or marijuana products are being cultivated, manufactured, sold, or tested in a particular house, or other place, in violation of law, the judge, magistrate, or other person having authority to issue criminal warrants to whom such complaint is made, if satisfied that there is a probable cause for such belief, shall issue a warrant to search such house or other place for marijuana or marijuana products. Such warrants, except as herein otherwise provided, shall be issued, directed, and executed in accordance with the laws of the Commonwealth pertaining to search warrants.

B. Warrants issued under this chapter for the search of any automobile, boat, conveyance, or vehicle, whether of like kind or not, or for the search of any article of baggage, whether of like kind or not, for marijuana or marijuana products may be executed in any part of the Commonwealth where they are overtaken and shall be made returnable before any judge within whose jurisdiction such automobile, boat, conveyance, vehicle, truck, or article of baggage, or any of them, was transported or attempted to be transported contrary to law.

**§ 3.2-4199.1. Punishment for violations of chapter.**

A. The provisions of this chapter shall not prevent the Board from suspending, revoking, or refusing to continue the license of any person convicted of a violation of any provision of this chapter.

B. No court shall hear such a case unless the respective attorney for the Commonwealth or his assistant has been notified that such a case is pending.

**§ 3.2-4199.2. Certificate of forensic scientist as evidence; requiring forensic scientist to appear.**

The certificate of any forensic scientist employed by the Commonwealth on behalf of the Board or the Department of Forensic Science, when signed by him, shall be evidence in all prosecutions for violations of this chapter and all controversies in any judicial proceedings touching the mixture analyzed by him. On motion of the accused or any party in interest, the court may require the forensic scientist making the analysis to appear as a witness and be subject to cross-examination, provided such motion is made within a reasonable time prior to the day on which the case is set for trial.

**§ 3.2-4199.3. Suspended sentence conditioned upon substance abuse screening, assessment, testing, and treatment or education.**

The trial judge or court trying the case of any person found guilty of violating any law concerning the use, in any manner, of marijuana shall condition any suspended sentence by first requiring such person to agree to undergo a substance abuse screening and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by the supervising probation agency or by personnel of any program or agency approved by the supervising probation agency. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of such criminal proceedings. The judge or court shall order the person, as a condition of any suspended sentence, to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program or agency licensed by the Department of Behavioral Health and Developmental Services or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on the Virginia Alcohol Safety Action Program (VASAP).

**§ 3.2-4199.4. Commitment of convicted person for treatment for substance abuse.**

A. Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to marijuana or has not previously had a proceeding against him for violation of such an offense dismissed as provided in § 3.2-4164 or 3.2-4165 is found guilty of violating any law concerning the use, in any manner, of marijuana, the judge or court shall require such person to undergo a substance abuse screening and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of the criminal proceedings. The judge or court shall also order the person to undergo such treatment or

2150 education for substance abuse, if available, as the judge or court deems appropriate based upon  
2151 consideration of the substance abuse assessment. The treatment or education shall be provided by a  
2152 program or agency licensed by the Department of Behavioral Health and Developmental Services or by  
2153 a similar program or services available through the Department of Corrections if the court imposes a  
2154 sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar  
2155 program or services available through a local or regional jail, a local community-based probation  
2156 services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on  
2157 the Virginia Alcohol Safety Action Program (VASAP).

2158 B. The court trying the case of any person alleged to have committed any offense designated by this  
2159 article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the  
2160 commission of the offense was motivated by or closely related to the use of drugs and determined by the  
2161 court, pursuant to a substance abuse screening and assessment, to be in need of treatment for the use of  
2162 drugs may commit, based upon a consideration of the substance abuse assessment, such person, upon  
2163 his conviction, to any facility for the treatment of persons with substance abuse licensed by the  
2164 Department of Behavioral Health and Developmental Services, if space is available in such facility, for  
2165 a period of time not in excess of the maximum term of imprisonment specified as the penalty for  
2166 conviction of such offense or, if the sentence was determined by a jury, not in excess of the term of  
2167 imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated  
2168 as confinement in a penal institution and the person so committed may be convicted of escape if he  
2169 leaves the place of commitment without authority. A charge of escape may be prosecuted in either the  
2170 jurisdiction where the treatment facility is located or the jurisdiction where the person was sentenced to  
2171 commitment. The court may revoke such commitment at any time and transfer the person to an  
2172 appropriate state or local correctional facility. Upon presentation of a certified statement from the  
2173 director of the treatment facility to the effect that the confined person has successfully responded to  
2174 treatment, the court may release such confined person prior to the termination of the period of time for  
2175 which such person was confined and may suspend the remainder of the term upon such conditions as  
2176 the court may prescribe.

2177 **§ 3.2-4199.5. Possession or distribution of marijuana for medical purposes permitted.**

2178 Nothing in this article shall be construed to prohibit or penalize:

2179 1. The possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a  
2180 valid prescription issued by a medical doctor in the course of his professional practice for treatment or  
2181 to alleviate the symptoms of any diagnosed condition or disease determined by the doctor to benefit  
2182 from the use of such substances;

2183 2. The dispensing or distributing of marijuana or tetrahydrocannabinol for medical purposes by a  
2184 medical doctor when such action occurs in the course of his professional practice for treatment or to  
2185 alleviate the symptoms of any diagnosed condition or disease determined by the doctor to benefit from  
2186 the use of such substances; or

2187 3. The dispensing or distributing of marijuana or tetrahydrocannabinol by a pharmacist to any  
2188 person who holds a valid prescription of a medical doctor for such substance issued in the course of  
2189 such doctor's professional practice for treatment or to alleviate the symptoms of any diagnosed  
2190 condition or disease determined by the doctor to benefit from the use of such substances.

2191 **§ 3.2-4199.6. Interaction with provisions concerning pharmaceutical processing of cannabidiol oil**  
2192 **and THC-A oil.**

2193 Nothing in this chapter shall be construed to prohibit or penalize any conduct that is permitted by  
2194 Article 4.2 (§ 54.1-3442.5 et seq.) of Chapter 34 of Title 54.1.

2195 **§ 4.1-225. Grounds for which Board may suspend or revoke licenses.**

2196 The Board may suspend or revoke any license other than a brewery license, in which case the Board  
2197 may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:

2198 1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an  
2199 association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the  
2200 licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital  
2201 stock, or if the licensee is a limited liability company, any member-manager or any member owning 10  
2202 percent or more of the membership interest of the limited liability company:

2203 a. Has misrepresented a material fact in applying to the Board for such license;

2204 b. Within the five years immediately preceding the date of the hearing held in accordance with  
2205 § 4.1-227, has (i) been convicted of a violation of any law, ordinance or regulation of the  
2206 Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States,  
2207 applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated  
2208 any provision of Chapter 3 (§ 4.1-300 et seq.); (iii) committed a violation of the Wine Franchise Act  
2209 (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated or failed or  
2210 refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply  
2211 with any of the conditions or restrictions of the license granted by the Board;

- 2212 c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude  
 2213 under the laws of any state, or of the United States;
- 2214 d. Is not the legitimate owner of the business conducted under the license granted by the Board, or  
 2215 other persons have ownership interests in the business which have not been disclosed;
- 2216 e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business  
 2217 conducted under the license granted by the Board;
- 2218 f. Has been intoxicated or under the influence of some self-administered drug while upon the  
 2219 licensed premises;
- 2220 g. Has maintained the licensed premises in an unsanitary condition, or allowed such premises to  
 2221 become a meeting place or rendezvous for members of a criminal street gang as defined in § 18.2-46.1  
 2222 or persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;
- 2223 h. Knowingly employs in the business conducted under such license, as agent, servant, or employee,  
 2224 other than a busboy, cook or other kitchen help, any person who has been convicted in any court of a  
 2225 felony or of any crime or offense involving moral turpitude, or who has violated the laws of the  
 2226 Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation,  
 2227 possession, use or sale of alcoholic beverages;
- 2228 i. Subsequent to the granting of his original license, has demonstrated by his police record a lack of  
 2229 respect for law and order;
- 2230 j. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person  
 2231 whom he knew or had reason to believe was (i) ~~less than~~ *under* 21 years of age, (ii) interdicted, or (iii)  
 2232 intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter  
 2233 upon such licensed premises;
- 2234 k. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as  
 2235 provided under this title;
- 2236 l. Is physically unable to carry on the business conducted under such license or has been adjudicated  
 2237 incapacitated;
- 2238 m. Has allowed any obscene literature, pictures or materials upon the licensed premises;
- 2239 n. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises;
- 2240 o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly  
 2241 allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use  
 2242 marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled  
 2243 paraphernalia as those terms are defined in *Articles 1 (§ 3.2-4121 et seq.) and 7 (§ 3.2-4164 et seq.) of*  
 2244 *Chapter 41.2 of Title 3.2, Articles 1 (§ 18.2-247 et seq.) and 1.1 (§ 18.2-247 18.2-265.1 et seq.) of*  
 2245 *Chapter 7 of Title 18.2, and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in*  
 2246 *violation of § 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Article 7*  
 2247 *of Chapter 41.2 of Title 3.2, Articles 1 and 1.1 of Chapter 7 (~~§ 18.2-247 et seq.~~) of Title 18.2, or the*  
 2248 *Drug Control Act (~~§ 54.1-3400 et seq.~~). The provisions of this subdivision shall also apply to any*  
 2249 *conduct related to the operation of the licensed business which that facilitates the commission of any of*  
 2250 *the offenses set forth herein;*
- 2251 p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises  
 2252 immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any  
 2253 portion of public property immediately adjacent to the licensed premises from becoming a place where  
 2254 patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et  
 2255 seq.), 2.1 (§ 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5  
 2256 (§ 18.2-58 et seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2  
 2257 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ 18.2-344 et seq.) or 5 (§ 18.2-372 et seq.)  
 2258 of Chapter 8 of Title 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of  
 2259 Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to  
 2260 reasonably be deemed a continuing threat to the public safety; or
- 2261 q. Has failed to take reasonable measures to prevent an act of violence resulting in death or serious  
 2262 bodily injury, or a recurrence of such acts, from occurring on (i) the licensed premises, (ii) any premises  
 2263 immediately adjacent to the licensed premises that is owned or leased by the licensee, or (iii) any  
 2264 portion of public property immediately adjacent to the licensed premises.
- 2265 2. The place occupied by the licensee:
- 2266 a. Does not conform to the requirements of the governing body of the county, city or town in which  
 2267 such establishment is located, with respect to sanitation, health, construction or equipment, or to any  
 2268 similar requirements established by the laws of the Commonwealth or by Board regulations;
- 2269 b. Has been adjudicated a common nuisance under the provisions of this title or § 18.2-258; or
- 2270 c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks,  
 2271 prostitutes, pimps, panderers or habitual law violators or has become a place where illegal drugs are  
 2272 regularly used or distributed. The Board may consider the general reputation in the community of such

2273 establishment in addition to any other competent evidence in making such determination.

2274 3. The licensee or any employee of the licensee discriminated against any member of the armed  
2275 forces of the United States by prices charged or otherwise.

2276 4. The licensee, his employees, or any entertainer performing on the licensed premises has been  
2277 convicted of a violation of a local public nudity ordinance for conduct occurring on the licensed  
2278 premises and the licensee allowed such conduct to occur.

2279 5. Any cause exists for which the Board would have been entitled to refuse to grant such license had  
2280 the facts been known.

2281 6. The licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any  
2282 penalties or interest related thereto, lawfully imposed by the locality where the licensed business is  
2283 located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality,  
2284 unless (i) the outstanding amount is de minimis; (ii) the licensee has pending a bona fide application for  
2285 correction or appeal with respect to such taxes, penalties, or interest; or (iii) the licensee has entered into  
2286 a payment plan approved by the same locality to settle the outstanding liability.

2287 7. Any other cause authorized by this title.

2288 **§ 16.1-69.48:1. Fixed fee for misdemeanors, traffic infractions and other violations in district**  
2289 **court; additional fees to be added.**

2290 A. Assessment of the fees provided for in this section shall be based on (i) an appearance for court  
2291 hearing in which there has been a finding of guilty; (ii) a written appearance with waiver of court  
2292 hearing and entry of guilty plea; (iii) for a defendant failing to appear, a trial in his or her absence  
2293 resulting in a finding of guilty; (iv) an appearance for court hearing in which the court requires that the  
2294 defendant successfully complete traffic school, a mature driver motor vehicle crash prevention course, or  
2295 a driver improvement clinic, in lieu of a finding of guilty; (v) a deferral of proceedings pursuant to §§  
2296 § 3.2-4164, 3.2-4165, 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-251, or 19.2-303.2; or (vi) proof  
2297 of compliance with law under §§ 46.2-104, 46.2-324, 46.2-613, 46.2-646, 46.2-711, 46.2-715, 46.2-716,  
2298 46.2-752, 46.2-1000, 46.2-1003, 46.2-1052, 46.2-1053, and 46.2-1158.02.

2299 In addition to any other fee prescribed by this section, a fee of \$35 shall be taxed as costs whenever  
2300 a defendant fails to appear, unless, after a hearing requested by such person, good cause is shown for  
2301 such failure to appear. No defendant with multiple charges arising from a single incident shall be taxed  
2302 the applicable fixed fee provided in subsection B, C, or D more than once for a single appearance or  
2303 trial in absence related to that incident. However, when a defendant who has multiple charges arising  
2304 from the same incident and who has been assessed a fixed fee for one of those charges is later  
2305 convicted of another charge that arises from that same incident and that has a higher fixed fee, he shall  
2306 be assessed the difference between the fixed fee earlier assessed and the higher fixed fee.

2307 A defendant with charges which arise from separate incidents shall be taxed a fee for each incident  
2308 even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

2309 In addition to the fixed fees assessed pursuant to this section, in the appropriate cases, the clerk shall  
2310 also assess any costs otherwise specifically provided by statute.

2311 B. In misdemeanors tried in district court, except for those proceedings provided for in subsection C,  
2312 there shall be assessed as court costs a fixed fee of \$61. The amount collected, in whole or in part, for  
2313 the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts  
2314 designated:

- 2315 1. Processing fee (General Fund) (.573770);
- 2316 2. Virginia Crime Victim-Witness Fund (.049180);
- 2317 3. Regional Criminal Justice Training Academies Fund (.016393);
- 2318 4. Courthouse Construction/Maintenance Fund (.032787);
- 2319 5. Criminal Injuries Compensation Fund (.098361);
- 2320 6. Intensified Drug Enforcement Jurisdiction Fund (.065574);
- 2321 7. Sentencing/supervision fee (General Fund) (.131148); and
- 2322 8. Virginia Sexual and Domestic Violence Victim Fund (.032787).

2323 C. In criminal actions and proceedings in district court for a violation of any provision of Article 1  
2324 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, there shall be assessed as court costs a fixed fee of \$136.  
2325 The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to  
2326 the following funds in the fractional amounts designated:

- 2327 1. Processing fee (General Fund) (.257353);
- 2328 2. Virginia Crime Victim-Witness Fund (.022059);
- 2329 3. Regional Criminal Justice Training Academies Fund (.007353);
- 2330 4. Courthouse Construction/Maintenance Fund (.014706);
- 2331 5. Criminal Injuries Compensation Fund (.044118);
- 2332 6. Intensified Drug Enforcement Jurisdiction Fund (.029412);
- 2333 7. Drug Offender Assessment and Treatment Fund (.551471);
- 2334 8. Forensic laboratory fee and sentencing/supervision fee (General Fund) (.058824); and

9. Virginia Sexual and Domestic Violence Victim Fund (.014706).

D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of \$51. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.764706);
2. Virginia Crime Victim-Witness Fund (.058824);
3. Regional Criminal Justice Training Academies Fund (.019608);
4. Courthouse Construction/Maintenance Fund (.039216);
5. Intensified Drug Enforcement Jurisdiction Fund (.078431); and
6. Virginia Sexual and Domestic Violence Victim Fund (.039216).

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

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the court. The intake officer may defer filing the complaint for 90 days and proceed informally by



2396 developing a truancy plan, provided that ~~(a)~~ (1) the juvenile has not previously been proceeded against  
2397 informally or adjudicated in need of supervision on more than two occasions for failure to comply with  
2398 compulsory school attendance as provided in § 22.1-254 and ~~(b)~~ (2) the immediately previous informal  
2399 action or adjudication occurred at least three calendar years prior to the current complaint. The juvenile  
2400 and his parent or parents, guardian, or other person standing in loco parentis must agree, in writing, for  
2401 the development of a truancy plan. The truancy plan may include requirements that the juvenile and his  
2402 parent or parents, guardian, or other person standing in loco parentis participate in such programs,  
2403 cooperate in such treatment, or be subject to such conditions and limitations as necessary to ensure the  
2404 juvenile's compliance with compulsory school attendance as provided in § 22.1-254. The intake officer  
2405 may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan  
2406 using an interagency interdisciplinary team approach. The team may include qualified personnel who are  
2407 reasonably available from the appropriate department of social services, community services board, local  
2408 school division, court service unit, and other appropriate and available public and private agencies and  
2409 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the  
2410 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then  
2411 the intake officer shall file the petition.

2412 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child  
2413 is in need of services, in need of supervision, or delinquent, the intake officer shall ~~(1)~~ (A) develop a  
2414 plan for the juvenile, which may include restitution and the performance of community service, based  
2415 upon community resources and the circumstances which resulted in the complaint, ~~(2)~~ (B) create an  
2416 official record of the action taken by the intake officer and file such record in the juvenile's case file,  
2417 and ~~(3)~~ (C) advise the juvenile and the juvenile's parent, guardian, or other person standing in loco  
2418 parentis and the complainant that any subsequent complaint alleging that the child is in need of  
2419 supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the  
2420 court pursuant to § 16.1-241 will result in the filing of a petition with the court.

2421 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,  
2422 visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has  
2423 deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such  
2424 child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment,  
2425 rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a  
2426 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  
2427 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,  
2428 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such  
2429 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to  
2430 be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer  
2431 believes that probable cause does not exist, or that the authorization of a petition will not be in the best  
2432 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other  
2433 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a  
2434 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written  
2435 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders  
2436 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant  
2437 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the  
2438 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to §  
2439 19.2-152.8, 19.2-152.9, or 19.2-152.10.

2440 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall  
2441 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be  
2442 in need of supervision have utilized or attempted to utilize treatment and services available in the  
2443 community and have exhausted all appropriate nonjudicial remedies which are available to them. When  
2444 the intake officer determines that the parties have not attempted to utilize available treatment or services  
2445 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the  
2446 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility,  
2447 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake  
2448 officer determines that the parties have made a reasonable effort to utilize available community  
2449 treatment or services may he permit the petition to be filed.

2450 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an  
2451 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in  
2452 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate  
2453 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic  
2454 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake  
2455 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate  
2456 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the  
2457 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 4 (~~§ 18.2-247 et seq.~~) of Chapter 7 of Title 18.2 7 (§ 3.2-4164 et seq.) of Chapter 41.2 of Title 3.2;

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 § 3.2-4164 or 3.2-4165*, provided *that* 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~~ *3.2-4164 or 3.2-4165* 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 *that* 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~~ *3.2-4164 or 3.2-4165* is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake

2519 on a form approved by the Supreme Court and make return of such service to the court. If the officer  
2520 fails to make such service or return, the court shall dismiss the summons without prejudice.

2521 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or  
2522 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in  
2523 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as  
2524 provided by law for adults provided that notice of the summons to appear is mailed by the investigating  
2525 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

2526 I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of  
2527 the jurisdiction granted it in § 16.1-241.

2528 **§ 16.1-273. Court may require investigation of social history and preparation of victim impact**  
2529 **statement.**

2530 A. When a juvenile and domestic relations district court or circuit court has adjudicated any case  
2531 involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a  
2532 violation of the game and fish law, or a violation of any city ordinance regulating surfing or establishing  
2533 curfew violations, the court before final disposition thereof may require an investigation, which (i) shall  
2534 include a drug screening and (ii) may, and for the purposes of subdivision A 14 or A 17 of § 16.1-278.8  
2535 shall, include a social history of the physical, mental, and social conditions, including an assessment of  
2536 any affiliation with a criminal street gang as defined in § 18.2-46.1, and personality of the child and the  
2537 facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated  
2538 delinquent on the basis of an act committed on or after January 1, 2000, which would be a felony if  
2539 committed by an adult, ~~or a violation under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et~~  
2540 ~~seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2~~  
2541 ~~misdemeanor if committed by an adult, or a violation of § 3.2-4164 or 3.2-4165, the court shall order~~  
2542 ~~the juvenile to undergo a drug screening. If the drug screening indicates that the juvenile has a~~  
2543 ~~substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse~~  
2544 ~~counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice or by a locally~~  
2545 ~~operated court services unit or by an individual employed by or currently under contract to such~~  
2546 ~~agencies and who is specifically trained to conduct such assessments under the supervision of such~~  
2547 ~~counselor.~~

2548 B. The court also shall, on motion of the attorney for the Commonwealth with the consent of the  
2549 victim, or may in its discretion, require the preparation of a victim impact statement in accordance with  
2550 the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant  
2551 physical, psychological, or economic injury as a result of the violation of law.

2552 **§ 16.1-278.8:01. Juveniles found delinquent of first drug offense; screening; assessment; drug**  
2553 **tests; costs and fees; education or treatment programs.**

2554 Whenever any juvenile who has not previously been found delinquent of any offense under Article 1  
2555 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 ~~or Article 7 (§ 3.2-4164 et seq.) of Chapter 41.2 of Title~~  
2556 ~~3.2 or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or~~  
2557 ~~stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for a~~  
2558 ~~violation of such an offense dismissed as provided in this section or § 18.2-251, is found delinquent of~~  
2559 ~~any offense concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana,~~  
2560 ~~noxious chemical substances and like substances, the juvenile court or the circuit court shall require such~~  
2561 ~~juvenile to undergo a substance abuse screening pursuant to § 16.1-273 and to submit to such periodic~~  
2562 ~~substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be~~  
2563 ~~conducted by a court services unit of the Department of Juvenile Justice, or by a locally operated court~~  
2564 ~~services unit or by personnel of any program or agency approved by the Department. The cost of such~~  
2565 ~~testing ordered by the court shall be paid by the Commonwealth from funds appropriated to the~~  
2566 ~~Department for this purpose. The court shall also order the juvenile to undergo such treatment or~~  
2567 ~~education program for substance abuse, if available, as the court deems appropriate based upon~~  
2568 ~~consideration of the substance abuse assessment. The treatment or education shall be provided by a~~  
2569 ~~program licensed by the Department of Behavioral Health and Developmental Services or by a similar~~  
2570 ~~program available through a facility or program operated by or under contract to the Department of~~  
2571 ~~Juvenile Justice or a locally operated court services unit or a program funded through the Virginia~~  
2572 ~~Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.).~~

2573 **§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm, and drug**  
2574 **offenses; truancy.**

2575 A. If a court has found facts which would justify a finding that a child at least 13 years of age at the  
2576 time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar  
2577 ordinance of any county, city, or town; (ii) a refusal to take a breath test in violation of § 18.2-268.2; (iii)  
2578 a felony violation of § 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4172, 18.2-248, ~~18.2-248.1~~ or 18.2-250; (iv)  
2579 a misdemeanor violation of § 3.2-4172, 18.2-248, ~~18.2-248.1~~, or 18.2-250 ~~or a violation of~~  
2580 ~~§ 18.2-250.1; (v) the unlawful purchase, possession, or consumption of alcohol in violation of § 4.1-305~~

or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309; (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city, or town; (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below; or (viii) a violation of § 18.2-83, the court shall order, in addition to any other penalty that it may impose as provided by law for the offense, that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person 17 years of age or younger, the court shall impose the additional fine and order community service as provided in § 18.2-270. If the offense involves a violation designated under clause (i), (ii), (iii), or (viii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v), or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of 16 years and three months, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age of 16 and three months. If the offense involves a first violation designated under clause (v) or (vi), the court shall impose the license sanction and may enter a judgment of guilt or, without entering a judgment of guilt, may defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than 30 days, except when the offense involves possession of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding 12 shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of 16 years and three months, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following the date he reaches the age of 16 and three months.

A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's driving privileges for a period of not less than 30 days. If such failure to comply involves a child under the age of 16 years and three months, the child's ability to apply for a driver's license shall be delayed for a period of not less than 30 days following the date he reaches the age of 16 and three months.

If the court finds a second or subsequent such offense, it may order the denial of a driver's license for a period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of 16 and three months, as may be appropriate.

A2. If a court finds that a child at least 13 years of age has refused to take a blood test in violation of § 18.2-268.2, the court shall order that the child be denied a driver's license for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense.

B. Any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 or A2 shall be ordered to surrender his driver's license, which shall be held in the physical custody of the court during any period of license denial.

C. The court shall report any order issued under this section to the Department of Motor Vehicles, which shall preserve a record thereof. The report and the record shall include a statement as to whether the child was represented by or waived counsel or whether the order was issued pursuant to subsection A1 or A2. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order of denial under subsection E.

D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of subsection A or a violation designated under subsection A2, the child may be referred to a certified alcohol safety action program in accordance with § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child involves a violation designated under clause (iii), (iv), (v), (vii) or (viii) of subsection A, such child may be referred to appropriate rehabilitative or educational services upon such terms and conditions as the court may set forth.

2642 The court, in its discretion and upon a demonstration of hardship, may authorize the use of a  
2643 restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the  
2644 offense or at the time of the court's finding as provided in subsection A1 or A2 for any of the purposes  
2645 set forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted  
2646 license shall be issued for travel to and from home and school when school-provided transportation is  
2647 available and no restricted license shall be issued if the finding as to such child involves a violation  
2648 designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent violation of  
2649 any offense designated in subsection A, a second finding by the court of failure to comply with school  
2650 attendance and meeting requirements as provided in subsection A1, or a second or subsequent finding by  
2651 the court of a refusal to take a blood test as provided in subsection A2. The issuance of the restricted  
2652 permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall  
2653 specifically enumerate the restrictions imposed and contain such information regarding the child as is  
2654 reasonably necessary to identify him. The child may operate a motor vehicle under the court order in  
2655 accordance with its terms. Any child who operates a motor vehicle in violation of any restrictions  
2656 imposed pursuant to this section is guilty of a violation of § 46.2-301.

2657 E. Upon petition made at least 90 days after issuance of the order, the court may review and  
2658 withdraw any order of denial of a driver's license if for a first such offense or finding as provided in  
2659 subsection A1 or A2. For a second or subsequent such offense or finding, the order may not be  
2660 reviewed and withdrawn until one year after its issuance.

2661 F. If the finding as to such child involves a first violation designated under clause (vii) of subsection  
2662 A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's  
2663 license has been restored, the court shall or, in the event the violation resulted in the injury or death of  
2664 any person or if the finding involves a violation designated under clause (i), (ii), (v), or (vi) of  
2665 subsection A, may discharge the child and dismiss the proceedings against him. Discharge and dismissal  
2666 under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be  
2667 retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill  
2668 such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves  
2669 a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed  
2670 pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or  
2671 § 18.2-251. If the finding as to such child involves a second violation under clause (v), (vi) or (vii) of  
2672 subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of  
2673 under § 16.1-278.8.

2674 **§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.**

2675 A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which  
2676 shall become effective on January 1, 1995. The initial recommended sentencing range for each felony  
2677 offense shall be determined first, by computing the actual time-served distribution for similarly situated  
2678 offenders, in terms of their conviction offense and prior criminal history, released from incarceration  
2679 during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by  
2680 eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended  
2681 sentencing range shall be the median time served for the middle two quartiles and subject to the  
2682 following additional enhancements:

2683 1. The midpoint of the initial recommended sentencing range for first degree murder, second degree  
2684 murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual  
2685 battery shall be further increased by (i) 125 percent in cases in which the defendant has no previous  
2686 conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously  
2687 been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years;  
2688 or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony  
2689 offense punishable by a maximum punishment of 40 years or more, except that the recommended  
2690 sentence for a defendant convicted of first degree murder who has previously been convicted of a  
2691 violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be  
2692 imprisonment for life;

2693 2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery,  
2694 aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory  
2695 burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any  
2696 statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100  
2697 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300  
2698 percent in cases in which the defendant has previously been convicted of a violent felony offense  
2699 punishable by a maximum term of imprisonment of less than 40 years, or (iii) 500 percent in cases in  
2700 which the defendant has previously been convicted of a violent felony offense punishable by a  
2701 maximum term of imprisonment of 40 years or more;

2702 3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving, or  
2703 distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II

controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2, or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, or the United States or its territories.

C. For purposes of this chapter, violent felony offenses shall include any felony violation of § 16.1-253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, or 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or 18.2-41; any violation of clause (c) (i) or (ii) of subsection B of § 18.2-46.3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation of § 18.2-48, 18.2-48.1, or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, or 18.2-55; any violation of subsection B of § 18.2-57; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or 18.2-58.1; any felony violation of § 18.2-60.1, 18.2-60.3, or 18.2-60.4; any violation of § 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, former § 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-67.4:1; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of § 18.2-85, 18.2-89, 18.2-90, 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any felony violation of subsection A or B of § 18.2-280; any violation of § 18.2-281; any felony violation of subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation of § 18.2-286.1, 18.2-287.2, 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any felony violation of subsection C of § 18.2-308.1 or § 18.2-308.2; any violation of § 18.2-308.2:1 or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312; 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 former § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of § 18.2-368, 18.2-370, or 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second or subsequent offense under §§ 18.2-379 and 18.2-381; 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, or 18.2-433.2; any felony violation of § 3.2-4176, 18.2-460, 18.2-474.1, or 18.2-477.1; any violation of § 18.2-477, 18.2-478, 18.2-480, 18.2-481, or 18.2-485; any violation of § 37.2-917; any violation of § 52-48; any violation of § 53.1-203; any conspiracy or attempt to commit any offense specified in this subsection, or any substantially similar offense under the laws of any state, the District of Columbia, or the United States or its territories.

#### **§ 18.2-46.1. Definitions.**

As used in this article unless the context requires otherwise or it is otherwise provided:

"Act of violence" means those felony offenses described in subsection A of § 19.2-297.1.

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

"Predicate criminal act" means (i) an act of violence; (ii) any violation of § 3.2-4171, 3.2-4174, 3.2-4175, 3.2-4177, 18.2-31, 18.2-42, 18.2-46.3, 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-55, 18.2-56.1, 18.2-57, 18.2-57.2, 18.2-59, 18.2-83, 18.2-89, 18.2-90, 18.2-95, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, 18.2-248.01, 18.2-248.03, 18.2-255, 18.2-255.2, 18.2-279, 18.2-282.1, 18.2-286.1, 18.2-287.4, 18.2-289,

2765 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-308.4, 18.2-355, 18.2-356, 18.2-357, or  
2766 18.2-357.1; (iii) a felony violation of § 18.2-60.3, 18.2-346, 18.2-348, or 18.2-349; (iv) a felony  
2767 violation of § 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4172, or 18.2-248 or of 18.2-248.1 or a conspiracy to  
2768 commit a felony violation of § 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4172, or 18.2-248 or 18.2-248.1; (v)  
2769 any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (vi) any substantially similar  
2770 offense under the laws of another state or territory of the United States, the District of Columbia, or the  
2771 United States.

2772 § 18.2-247. Use of terms "controlled substances," "Schedules I, II, III, IV, V and VI,"  
2773 "imitation controlled substance" and "counterfeit controlled substance" in Title 18.2.

2774 A. Wherever the terms "controlled substances" and "Schedules I, II, III, IV, V and VI" are used in  
2775 Title 18.2, such terms refer to those terms as they are used or defined in the Drug Control Act  
2776 (§ 54.1-3400 et seq.).

2777 B. The term "imitation controlled substance" when used in this article means (i) a counterfeit  
2778 controlled substance or (ii) a pill, capsule, tablet, or substance in any form whatsoever which is not a  
2779 controlled substance subject to abuse, and:

2780 1. Which by overall dosage unit appearance, including color, shape, size, marking and packaging or  
2781 by representations made, would cause the likelihood that such a pill, capsule, tablet, or substance in any  
2782 other form whatsoever will be mistaken for a controlled substance unless such substance was introduced  
2783 into commerce prior to the initial introduction into commerce of the controlled substance which it is  
2784 alleged to imitate; or

2785 2. Which by express or implied representations purports to act like a controlled substance as a  
2786 stimulant or depressant of the central nervous system and which is not commonly used or recognized for  
2787 use in that particular formulation for any purpose other than for such stimulant or depressant effect,  
2788 unless marketed, promoted, or sold as permitted by the United States Food and Drug Administration.

2789 C. In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an  
2790 "imitation controlled substance," there shall be considered, in addition to all other relevant factors,  
2791 comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal  
2792 purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the  
2793 packaging of the drug and its appearance in overall finished dosage form, promotional materials or  
2794 representations, oral or written, concerning the drug, and the methods of distribution of the drug and  
2795 where and how it is sold to the public.

2796 D. The term "marijuana" when used in this article means any part of a plant of the genus *Cannabis*,  
2797 whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture,  
2798 or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract  
2799 containing one or more cannabinoids unless such extract contains less than 12 percent of  
2800 tetrahydrocannabinol by weight, or the mature stalks of such plant, fiber produced from such stalk, oil  
2801 or cake made from the seed of such plant, unless such stalks, fiber, oil or cake is combined with other  
2802 parts of plants of the genus *Cannabis*. Marijuana shall not include (i) industrial hemp, as defined in  
2803 § 3.2-4112, that is possessed by a person registered pursuant to subsection A of § 3.2-4115 or his agent  
2804 or (ii) a hemp product, as defined in § 3.2-4112, containing a tetrahydrocannabinol concentration of no  
2805 greater than 0.3 percent that is derived from industrial hemp, as defined in § 3.2-4112, that is grown,  
2806 dealt, or processed in compliance with state or federal law.

2807 E. The term "counterfeit controlled substance" means a controlled substance that, without  
2808 authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear, the  
2809 trademark, trade name, or other identifying mark, imprint or device or any likeness thereof, of a drug  
2810 manufacturer, processor, packer, or distributor other than the manufacturer, processor, packer, or  
2811 distributor who did in fact so manufacture, process, pack or distribute such drug.

2812 § 18.2-248. Manufacturing, selling, giving, distributing, or possessing with intent to  
2813 manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance  
2814 prohibited; penalties.

2815 A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any  
2816 person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute  
2817 a controlled substance or an imitation controlled substance.

2818 B. In determining whether any person intends to manufacture, sell, give or distribute an imitation  
2819 controlled substance, the court may consider, in addition to all other relevant evidence, whether any  
2820 distribution or attempted distribution of such pill, capsule, tablet or substance in any other form  
2821 whatsoever included an exchange of or a demand for money or other property as consideration, and, if  
2822 so, whether the amount of such consideration was substantially greater than the reasonable value of such  
2823 pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical  
2824 composition of such pill, capsule, tablet or substance in any other form whatsoever and, where  
2825 applicable, the price at which over-the-counter substances of like chemical composition sell.

2826 C. Except as provided in subsection C1, any person who violates this section with respect to a

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

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses 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 a period of not less than 10 years, 10 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.

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

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

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

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

C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its salts, isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction, be imprisoned for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a second conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years, and be fined not more than \$500,000. When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment, or information that he has been previously convicted of two or more such offenses 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 a period not less than 10 years, three years of which



2888 shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence  
2889 and he shall be fined not more than \$500,000.

2890 Upon conviction, in addition to any other punishment, a person found guilty of this offense shall be  
2891 ordered by the court to make restitution, as the court deems appropriate, to any innocent property owner  
2892 whose property is damaged, destroyed, or otherwise rendered unusable as a result of such  
2893 methamphetamine production. This restitution shall include the person's or his estate's estimated or actual  
2894 expenses associated with cleanup, removal, or repair of the affected property. If the property that is  
2895 damaged, destroyed, or otherwise rendered unusable as a result of such methamphetamine production is  
2896 property owned in whole or in part by the person convicted, the court shall order the person to pay to  
2897 the Methamphetamine Cleanup Fund authorized in § 18.2-248.04 the reasonable estimated or actual  
2898 expenses associated with cleanup, removal, or repair of the affected property or, if actual or estimated  
2899 expenses cannot be determined, the sum of \$10,000. The convicted person shall also pay the cost of  
2900 certifying that any building that is cleaned up or repaired pursuant to this section is safe for human  
2901 occupancy according to the guidelines established pursuant to § 32.1-11.7.

2902 D. If such person proves that he gave, distributed or possessed with intent to give or distribute a  
2903 controlled substance classified in Schedule I or II only as an accommodation to another individual who  
2904 is not an inmate in a community correctional facility, local correctional facility or state correctional  
2905 facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit  
2906 thereby from any consideration received or expected nor to induce the recipient or intended recipient of  
2907 the controlled substance to use or become addicted to or dependent upon such controlled substance, he  
2908 shall be is guilty of a Class 5 felony.

2909 E. If the violation of the provisions of this article consists of the filling by a pharmacist of the  
2910 prescription of a person authorized under this article to issue the same, which prescription has not been  
2911 received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact  
2912 received by the pharmacist within one week of the time of filling the same, or if such violation consists  
2913 of a request by such authorized person for the filling by a pharmacist of a prescription which has not  
2914 been received in writing by the pharmacist and such prescription is, in fact, written at the time of such  
2915 request and delivered to the pharmacist within one week thereof, either such offense shall constitute a  
2916 Class 4 misdemeanor.

2917 E1. Any person who violates this section with respect to a controlled substance classified in Schedule  
2918 III except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, shall  
2919 be is guilty of a Class 5 felony.

2920 E2. Any person who violates this section with respect to a controlled substance classified in Schedule  
2921 IV shall be is guilty of a Class 6 felony.

2922 E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute  
2923 a controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in  
2924 Schedule III, constituting a violation of § 18.2-248.5, only as an accommodation to another individual  
2925 who is not an inmate in a community correctional facility, local correctional facility or state correctional  
2926 facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with the intent to profit  
2927 thereby from any consideration received or expected nor to induce the recipient or intended recipient of  
2928 the controlled substance to use or become addicted to or dependent upon such controlled substance, is  
2929 guilty of a Class 1 misdemeanor.

2930 F. Any person who violates this section with respect to a controlled substance classified in Schedule  
2931 V or Schedule VI or an imitation controlled substance which that imitates a controlled substance  
2932 classified in Schedule V or Schedule VI, shall be is guilty of a Class 1 misdemeanor.

2933 G. Any person who violates this section with respect to an imitation controlled substance which that  
2934 imitates a controlled substance classified in Schedule I, II, III, or IV shall be is guilty of a Class 6  
2935 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this  
2936 subsection that the defendant believed the imitation controlled substance to actually be a controlled  
2937 substance.

2938 H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture,  
2939 sell, give or distribute the following:

- 2940 1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;  
2941 2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:  
2942 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and  
2943 derivatives of ecgonine or their salts have been removed;  
2944 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;  
2945 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or  
2946 d. Any compound, mixture, or preparation which contains any quantity of any of the substances  
2947 referred to in subdivisions a through c;  
2948 3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains  
2949 cocaine base; or

4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or  
 5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers ~~shall be~~ *is* guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence. Such mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so; (iii) the offense did not result in death or serious bodily injury to any person; (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section; and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3011 5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0  
3012 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts,  
3013 isomers, or salts of its isomers ~~shall be~~ is guilty of a felony punishable by a fine of not more than \$1  
3014 million and imprisonment for life, which shall be served with no suspension in whole or in part. Such  
3015 punishment shall be made to run consecutively with any other sentence. However, the court may impose  
3016 a mandatory minimum sentence of 40 years if the court finds that the defendant substantially cooperated  
3017 with law-enforcement authorities.

3018 I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he  
3019 violates any provision of this section, the punishment for which is a felony and either (ii) such violation  
3020 is a part of a continuing series of violations of this section which are undertaken by such person in  
3021 concert with five or more other persons with respect to whom such person occupies a position of  
3022 organizer, a supervisory position, or any other position of management, and from which such person  
3023 obtains substantial income or resources or (iii) such violation is committed, with respect to  
3024 methamphetamine or other controlled substance classified in Schedule I or II, for the benefit of, at the  
3025 direction of, or in association with any criminal street gang as defined in § 18.2-46.1.

3026 J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any  
3027 two or more different substances listed below with the intent to manufacture methamphetamine,  
3028 methcathinone, or amphetamine is guilty of a Class 6 felony: ~~liquified~~ liquefied ammonia gas,  
3029 ammonium nitrate, ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine  
3030 crystals or tincture of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl  
3031 formamide, lithium, sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium  
3032 dichromate, potassium permanganate, chromium trioxide, methylbenzene, methamphetamine precursor  
3033 drugs, trichloroethane, or 2-propanone.

3034 K. The term "methamphetamine precursor drug," when used in this article, means a drug or product  
3035 containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or  
3036 salts of optical isomers.

3037 **§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.**

3038 Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person to  
3039 transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of  
3040 cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II  
3041 of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance ~~or five~~  
3042 ~~or more pounds of marijuana~~. A violation of this section shall constitute a separate and distinct felony.  
3043 Upon conviction, the person shall be sentenced to not less than five years nor more than 40 years  
3044 imprisonment, three years of which shall be a mandatory minimum term of imprisonment, and a fine not  
3045 to exceed ~~\$1,000,000~~ \$1 million. A second or subsequent conviction hereunder shall be punishable by a  
3046 mandatory minimum term of imprisonment of 10 years, which shall be served consecutively with any  
3047 other sentence.

3048 **§ 18.2-251. Persons charged with first offense may be placed on probation; conditions;**  
3049 **substance abuse screening, assessment treatment and education programs or services; drug tests;**  
3050 **costs and fees; violations; discharge.**

3051 Whenever any person who has not previously been convicted of any offense under this article or  
3052 under any statute of the United States or of any state relating to narcotic ~~drugs, marijuana, or~~ stimulant,  
3053 depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of  
3054 such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to  
3055 possession of a controlled substance under § 18.2-250 ~~or to possession of marijuana under § 18.2-250.1,~~  
3056 the court, upon such plea if the facts found by the court would justify a finding of guilt, without  
3057 entering a judgment of guilt and with the consent of the accused, may defer further proceedings and  
3058 place him on probation upon terms and conditions. If the court defers further proceedings, at that time  
3059 the court shall determine whether the clerk of court has been provided with the fingerprint identification  
3060 information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390,  
3061 and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement  
3062 officer.

3063 As a term or condition, the court shall require the accused to undergo a substance abuse assessment  
3064 pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment ~~and/or~~ or an education  
3065 program or services, ~~or any combination thereof~~, if available, such as, in the opinion of the court, may  
3066 be best suited to the needs of the accused based upon consideration of the substance abuse assessment.  
3067 The program or services may be located in the judicial district in which the charge is brought or in any  
3068 other judicial district as the court may provide. The services shall be provided by (i) a program licensed  
3069 by the Department of Behavioral Health and Developmental Services, ~~or by a similar program which~~  
3070 ~~that~~ is made available through the Department of Corrections, (ii) a local community-based probation  
3071 services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the  
3072 Commission on VASAP.

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

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

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

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

#### **§ 18.2-251.03. Safe reporting of overdoses.**

A. For purposes of this section, "overdose" means a life-threatening condition resulting from the consumption or use of a controlled substance, alcohol, or any combination of such substances.

B. It shall be an affirmative defense to prosecution of an individual for the unlawful purchase, possession, or consumption of alcohol pursuant to § 4.1-305, possession of a controlled substance pursuant to § 18.2-250, possession of marijuana pursuant to ~~§ 18.2-250.1~~, intoxication in public pursuant to § 18.2-388, or possession of controlled paraphernalia pursuant to § 54.1-3466 if:

1. Such individual, in good faith, seeks or obtains emergency medical attention for himself, if he is experiencing an overdose, or for another individual, if such other individual is experiencing an overdose, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system;

2. Such individual remains at the scene of the overdose or at any alternative location to which he or the person requiring emergency medical attention has been transported until a law-enforcement officer responds to the report of an overdose. If no law-enforcement officer is present at the scene of the overdose or at the alternative location, then such individual shall cooperate with law enforcement as otherwise set forth herein;

3. Such individual identifies himself to the law-enforcement officer who responds to the report of the overdose; and

4. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of the individual seeking or obtaining emergency medical attention.

C. No individual may assert the affirmative defense provided for in this section if the person sought or obtained emergency medical attention for himself or another individual during the execution of a search warrant or during the conduct of a lawful search or a lawful arrest.

D. This section does not establish an affirmative defense for any individual or offense other than those listed in subsection B.

#### **§ 18.2-251.1:1. Possession or distribution of cannabidiol oil or THC-A oil; public schools.**

No school nurse employed by a local school board, person employed by a local health department who is assigned to the public school pursuant to an agreement between the local health department and

the school board, or other person employed by or contracted with a local school board to deliver health-related services shall be prosecuted under § 3.2-4164, 3.2-4165, 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4171, 3.2-4172, 18.2-248, ~~18.2-248.1~~, 18.2-250, ~~18.2-250.1~~, or 18.2-255 for the possession or distribution of cannabidiol oil or THC-A oil for storing, dispensing, or administering cannabidiol oil or THC-A oil, in accordance with a policy adopted by the local school board, to a student who has been issued a valid written certification for the use of cannabidiol oil or THC-A oil in accordance with subsection B of § 54.1-3408.3.

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

The trial judge or court trying the case of any person found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, ~~marijuana~~, noxious chemical substances, and like substances, shall condition any suspended sentence by first requiring such person to agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by the supervising probation agency or by personnel of any program or agency approved by the supervising probation agency. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of such criminal proceedings. The judge or court shall order the person, as a condition of any suspended sentence, to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program or agency licensed by the Department of Behavioral Health and Developmental Services, by a similar program or services available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

**§ 18.2-254. Commitment of convicted person for treatment for substance abuse.**

A. Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic ~~drugs~~, ~~marijuana~~, stimulant, depressant, or hallucinogenic drugs or has not previously had a proceeding against him for violation of such an offense dismissed as provided in § 18.2-251 is found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, ~~marijuana~~, noxious chemical substances, and like substances, the judge or court shall require such person to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of the criminal proceedings. The judge or court shall also order the person to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program or agency licensed by the Department of Behavioral Health and Developmental Services or by a similar program or services available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

B. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by or closely related to the use of drugs and determined by the court, pursuant to a substance abuse screening and assessment, to be in need of treatment for the use of drugs may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse, licensed by the Department of Behavioral Health and Developmental Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. A charge of escape may be prosecuted in either the jurisdiction where the treatment facility is located or the jurisdiction where the person was sentenced to commitment. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

C. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines, pursuant to a substance abuse screening and assessment, that such defendant is in need of treatment, may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse licensed by the Department of Behavioral Health and Developmental Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

**§ 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty.**

A. Except as authorized in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, it shall be is unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any drug classified in Schedule I, II, III, or IV ~~or marijuana~~ to any person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any drug classified in Schedule I, II, III, or IV ~~or marijuana~~. Any person violating this provision shall upon conviction be imprisoned in a state correctional facility for a period not less than 10 nor more than 50 years, and fined not more than \$100,000. Five years of the sentence imposed for a conviction under this section involving a Schedule I or II controlled substance ~~or one ounce or more of marijuana~~ shall be a mandatory minimum sentence. ~~Two years of the sentence imposed for a conviction under this section involving less than one ounce of marijuana shall be a mandatory minimum sentence.~~

B. It shall be is unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any imitation controlled substance to a person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any imitation controlled substance. Any person violating this provision shall be is guilty of a Class 6 felony.

**§ 18.2-255.1. Distribution, sale or display of printed material advertising instruments for use in administering controlled substances to minors; penalty.**

It shall be is a Class 1 misdemeanor for any person knowingly to sell, distribute, or display for sale to a minor any book, pamphlet, periodical, or other printed matter ~~which~~ that he knows advertises for sale any instrument, device, article, or contrivance for advertised use in unlawfully ingesting, smoking, administering, preparing, or growing ~~marijuana~~ or a controlled substance.

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

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

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

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

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

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

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

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

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than \$100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control

3257 Act (§ 54.1-3400 et seq.) ~~or more than one-half ounce of marijuana~~ shall be punished by a mandatory  
3258 minimum term of imprisonment of one year to be served consecutively with any other sentence.  
3259 However, if such person proves that he sold such controlled substance ~~or marijuana~~ only as an  
3260 accommodation to another individual and not with intent to profit thereby from any consideration  
3261 received or expected nor to induce the recipient or intended recipient of the controlled substance ~~or~~  
3262 ~~marijuana~~ to use or become addicted to or dependent upon such controlled substance ~~or marijuana~~, he is  
3263 guilty of a Class 1 misdemeanor.

3264 C. If a person commits an act violating the provisions of this section, and the same act also violates  
3265 another provision of law that provides for penalties greater than those provided for by this section, then  
3266 nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of  
3267 law or the imposition of any penalties provided for thereby.

3268 **§ 18.2-258. Certain premises deemed common nuisance; penalty.**

3269 Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse,  
3270 dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, which with the  
3271 knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or  
3272 tenant thereof, is frequented by persons under the influence of illegally obtained controlled substances ~~or~~  
3273 ~~marijuana~~, as defined in § 54.1-3401, or for the purpose of illegally obtaining possession of,  
3274 manufacturing, or distributing controlled substances ~~or marijuana~~, or is used for the illegal possession,  
3275 manufacture, or distribution of controlled substances ~~or marijuana~~ shall be deemed a common nuisance.  
3276 Any such owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant  
3277 who knowingly permits, establishes, keeps or maintains such a common nuisance is guilty of a Class 1  
3278 misdemeanor and, for a second or subsequent offense, a Class 6 felony.

3279 **§ 18.2-258.02. Maintaining a fortified drug house; penalty.**

3280 Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse,  
3281 dwelling house, apartment, or building or structure of any kind ~~which~~ *that* is (i) substantially altered  
3282 from its original status by means of reinforcement with the intent to impede, deter, or delay lawful entry  
3283 by a law-enforcement officer into such structure; (ii) being used for the purpose of manufacturing or  
3284 distributing controlled substances ~~or marijuana~~; and (iii) the object of a valid search warrant; shall be  
3285 considered a fortified drug house. Any person who maintains or operates a fortified drug house is guilty  
3286 of a Class 5 felony.

3287 **§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud,**  
3288 **deceit, or forgery.**

3289 A. It ~~shall be~~ *is* unlawful for any person to obtain or attempt to obtain any drug or procure or  
3290 attempt to procure the administration of any controlled substance ~~or marijuana~~: (i) by fraud, deceit,  
3291 misrepresentation, embezzlement, or subterfuge; (ii) by the forgery or alteration of a prescription or of  
3292 any written order; (iii) by the concealment of a material fact; or (iv) by the use of a false name or the  
3293 giving of a false address.

3294 B. It ~~shall be~~ *is* unlawful for any person to furnish false or fraudulent information in or omit any  
3295 information from, or willfully make a false statement in, any prescription, order, report, record, or other  
3296 document required by Chapter 34 *the Drug Control Act* (§ 54.1-3400 et seq.) of Title 54.1.

3297 C. It ~~shall be~~ *is* unlawful for any person to use in the course of the manufacture or distribution of a  
3298 controlled substance ~~or marijuana~~ a license number ~~which~~ *that* is fictitious, revoked, suspended, or  
3299 issued to another person.

3300 D. It ~~shall be~~ *is* unlawful for any person, for the purpose of obtaining any controlled substance ~~or~~  
3301 ~~marijuana~~ to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler,  
3302 pharmacist, physician, dentist, veterinarian, or other authorized person.

3303 E. It ~~shall be~~ *is* unlawful for any person to make or utter any false or forged prescription or false or  
3304 forged written order.

3305 F. It ~~shall be~~ *is* unlawful for any person to affix any false or forged label to a package or receptacle  
3306 containing any controlled substance.

3307 G. This section shall not apply to officers and employees of the United States, of this  
3308 Commonwealth, or of a political subdivision of this Commonwealth acting in the course of their  
3309 employment, who obtain such drugs for investigative, research or analytical purposes, or to the agents or  
3310 duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for  
3311 investigative, research or analytical purposes and who are acting in the course of their employment;  
3312 provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and  
3313 Cosmetic Act; and provided, further, that such pharmaceutical manufacturer, its agents and duly  
3314 authorized representatives file with the Board such information as the Board may deem appropriate.

3315 H. Except as otherwise provided in this subsection, any person who ~~shall violate~~ *violates* any  
3316 provision herein ~~shall be~~ *is* guilty of a Class 6 felony.

3317 Whenever any person who has not previously been convicted of any offense under this article or  
3318 under any statute of the United States or of any state relating to narcotic ~~drugs, marijuana, or~~ stimulant,



depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not guilty to the court for violating this section, upon such plea if the facts found by the court would justify a finding of guilt, the court may place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to be evaluated and enter a treatment ~~and/or~~ *or an education program, or any combination thereof*, if available, such as, in the opinion of the court, may be best suited to the needs of the accused. This program may be located in the judicial circuit in which the charge is brought or in any other judicial circuit as the court may provide. The services shall be provided by a program certified or licensed by the Department of Behavioral Health and Developmental Services. The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, evaluation, testing, and education, based upon the person's ability to pay, unless the person is determined by the court to be indigent.

As a condition of supervised probation, the court shall require the accused to remain drug free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug free. Such testing may be conducted by the personnel of any screening, evaluation, and education program to which the person is referred or by the supervising agency.

Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall find the defendant guilty of a Class 1 misdemeanor.

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

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

B. The court trying the case shall order any person so convicted or placed on probation to surrender his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of any such conviction entered and of the license forfeiture to be imposed.

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

**§ 18.2-265.1. Definition.**

As used in this article, the term "drug paraphernalia" means all equipment, products, and materials of any kind ~~which that~~ are either designed for use or ~~which that~~ are intended by the person charged with violating § 18.2-265.3 for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, strength testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body ~~marijuana~~ or a controlled substance. It includes; but is not limited to:

1. Kits intended for use or designed for use in planting, propagating, cultivating, growing, or harvesting of ~~marijuana~~ or any species of plant ~~which that~~ is a controlled substance or from which a controlled substance can be derived;

2. Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing ~~marijuana~~ or controlled substances;

3. Isomerization devices intended for use or designed for use in increasing the potency of ~~marijuana~~ or any species of plant ~~which that~~ is a controlled substance;

4. Testing equipment intended for use or designed for use in identifying or in analyzing the strength or effectiveness of ~~marijuana~~ or controlled substances, other than narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog;

5. Scales and balances intended for use or designed for use in weighing or measuring ~~marijuana~~ or controlled substances;

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, or mannite, intended for use or designed for use in cutting controlled substances;

7. ~~Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;~~

8. Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances;

9. 8. Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of ~~marijuana~~ or controlled substances;

~~10. 9. Containers and other objects intended for use or designed for use in storing or concealing marijuana or controlled substances;~~

~~11. 10. Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body;~~

~~12. 11. Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:~~

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips, meaning objects used to hold burning material, such as a ~~marijuana~~ cigarette, that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons, and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums;

l. Bongs;

m. Ice pipes or chillers.

**§ 18.2-265.2. Evidence to be considered in cases under this article.**

In determining whether an object is drug paraphernalia, the court may consider, in addition to all other relevant evidence, the following:

1. Constitutionally admissible statements by the accused concerning the use of the object;

2. The proximity of the object to ~~marijuana~~ or controlled substances, which proximity is actually known to the accused;

3. Instructions, oral or written, provided with the object concerning its use;

4. Descriptive materials accompanying the object ~~which that~~ explain or depict its use;

5. National and local advertising within the actual knowledge of the accused concerning its use;

6. The manner in which the object is displayed for sale;

7. Whether the accused is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

8. Evidence of the ratio of sales of the objects defined in § 18.2-265.1 to the total sales of the business enterprise;

9. The existence and scope of legitimate uses for the object in the community;

10. Expert testimony concerning its use or the purpose for which it was designed;

11. Relevant evidence of the intent of the accused to deliver it to persons who he knows, or should reasonably know, intend to use the object with an illegal drug. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this article shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

**§ 18.2-265.3. Penalties for sale, etc., of drug paraphernalia.**

A. Any person who sells or possesses with intent to sell drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it is either designed for use or intended by such person for use to illegally plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body ~~marijuana or~~ a controlled substance, ~~shall be~~ is guilty of a Class 1 misdemeanor.

B. Any person ~~eighteen~~ 18 years of age or older who violates subsection A ~~hereof~~ by selling drug paraphernalia to a minor who is at least three years junior to the accused in age ~~shall be~~ is guilty of a Class 6 felony.

C. Any person ~~eighteen~~ 18 years of age or older who distributes drug paraphernalia to a minor ~~shall be~~ is guilty of a Class 1 misdemeanor.

**§ 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 violation of § 3.2-4172, a felony violation of § 18.2-248, or a violation of subdivision (a) 2 or 3 of § 18.2-248.1 B 2 or 3 of § 3.2-4169,~~ 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.

3503 11. An individual who has been discharged from the armed forces of the United States under  
3504 dishonorable conditions.

3505 12. An individual who is a fugitive from justice.

3506 13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by  
3507 the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief  
3508 of police, or attorney for the Commonwealth may submit to the court a sworn, written statement  
3509 indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based  
3510 upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is  
3511 likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief  
3512 of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such  
3513 individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the  
3514 specific acts, or upon a written statement made under oath before a notary public of a competent person  
3515 having personal knowledge of the specific acts.

3516 14. An individual who has been convicted of any assault, assault and battery, sexual battery,  
3517 discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in  
3518 violation of § 18.2-282 within the three-year period immediately preceding the application.

3519 15. An individual who has been convicted of stalking.

3520 16. An individual whose previous convictions or adjudications of delinquency were based on an  
3521 offense that would have been at the time of conviction a felony if committed by an adult under the laws  
3522 of any state, the District of Columbia, the United States or its territories. For purposes of this  
3523 disqualifier, only convictions occurring within 16 years following the later of the date of (i) the  
3524 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or  
3525 adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall  
3526 not apply to an individual with previous adjudications of delinquency who has completed a term of  
3527 service of no less than two years in the Armed Forces of the United States and, if such person has been  
3528 discharged from the Armed Forces of the United States, received an honorable discharge.

3529 17. An individual who has a felony charge pending or a charge pending for an offense listed in  
3530 subdivision 14 or 15.

3531 18. An individual who has received mental health treatment or substance abuse treatment in a  
3532 residential setting within five years prior to the date of his application for a concealed handgun permit.

3533 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period  
3534 immediately preceding the application for the permit, was found guilty of any criminal offense set forth  
3535 in Article 1 (§ 18.2-247 et seq.) ~~or~~, former § 18.2-248.1:1, *or Article 7 (§ 3.2-4164 et seq.) of Chapter*  
3536 *41.2 of Title 3.2*, or of a criminal offense of illegal possession or distribution of marijuana, synthetic  
3537 cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the  
3538 United States or its territories.

3539 20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the  
3540 three-year period immediately preceding the application, upon a charge of any criminal offense set forth  
3541 in Article 1 (§ 18.2-247 et seq.) ~~or~~, former § 18.2-248.1:1, *or Article 7 (§ 3.2-4164 et seq.) of Chapter*  
3542 *41.2 of Title 3.2*, or upon a charge of illegal possession or distribution of marijuana, synthetic  
3543 cannabinoids, or any controlled substance under the laws of any state, the District of Columbia, or the  
3544 United States or its territories, the trial court found that the facts of the case were sufficient for a  
3545 finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any  
3546 other state, the District of Columbia, or the United States or its territories.

3547 **§ 18.2-308.1:5. Purchase or transportation of firearm by persons convicted of certain drug**  
3548 **offenses prohibited.**

3549 Any person who, within a 36-consecutive-month period, has been convicted of two misdemeanor  
3550 offenses under § 3.2-4164 *or* 3.2-4165, subsection B of former § 18.2-248.1:1, *or* § 18.2-250 ~~or~~  
3551 ~~18.2-250.1~~ shall be ineligible to purchase or transport a handgun. However, upon expiration of a period  
3552 of five years from the date of the second conviction and provided the person has not been convicted of  
3553 any such offense within that period, the ineligibility shall be removed.

3554 **§ 18.2-308.4. Possession of firearms while in possession of certain substances.**

3555 A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in  
3556 Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) ~~of Title 54.1~~ to simultaneously with  
3557 knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and  
3558 constitutes a separate and distinct felony.

3559 B. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in  
3560 Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and  
3561 intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and  
3562 constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a  
3563 mandatory minimum term of imprisonment of two years. Such punishment shall be separate and apart  
3564 from, and shall be made to run consecutively with, any punishment received for the commission of the

primary felony.

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

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

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

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

C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in any court relating to a violation of or conspiracy to violate § ~~18.2-248~~ ~~or subdivision (a)(3), (b) or (c) of § 18.2-248~~ ~~18.2-4167, subdivision B 3 of § 3.2-4169, subsection B of § 3.2-4170, or § 3.2-4172, 18.2-46.2 or §, 18.2-46.3, or 18.2-248~~ 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.

**§ 18.2-474.1. Delivery of drugs, firearms, explosives, etc., to prisoners or committed persons.**

Notwithstanding the provisions of § 18.2-474, any person who shall willfully in any manner deliver, attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, or to any person committed to the Department of Juvenile Justice in any juvenile correctional center, any drug which is a controlled substance regulated by the Drug Control Act in ~~Chapter 34~~ (§ 54.1-3400 et seq.) ~~of Title 54.1 or marijuana~~ is guilty of a Class 5 felony. Any person who shall willfully in any manner so deliver or attempt to deliver or conspire to deliver to any such prisoner or confined or committed person, firearms, ammunitions, or explosives of any nature is guilty of a Class 3 felony.

Nothing herein contained shall be construed to repeal or amend § 18.2-473.

**§ 19.2-11.2. Crime victim's right to nondisclosure of certain information; exceptions; testimonial privilege.**

Upon request of any witness in a criminal prosecution under § ~~3.2-4172~~, 18.2-46.2, 18.2-46.3, or 18.2-248 or of any violent felony as defined by subsection C of § 17.1-805, or any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, the counsel for a defendant, a court nor the Department of Corrections, nor any employee of any of them, may disclose, except among themselves, the residential address, any telephone number, email address, or place of employment of the witness or victim or a member of the witness' or victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause.

Except with the written consent of the victim of any crime involving any sexual assault, sexual abuse, or family abuse or the victim's next of kin if the victim is a minor and the victim's death results from any crime, a law-enforcement agency may not disclose to the public information that directly or indirectly identifies the victim of such crime except to the extent that disclosure is (a) of the site of the crime, (b) required by law, (c) necessary for law-enforcement purposes, or (d) permitted by the court for good cause. In addition, at the request of the victim to the Court of Appeals of Virginia or the Supreme Court of Virginia hearing, on or after July 1, 2007, the case of a crime involving any sexual assault or sexual abuse, no appellate decision shall contain the first or last name of the victim.

Nothing herein shall limit the right to examine witnesses in a court of law or otherwise affect the conduct of any criminal proceeding.

**§ 19.2-66. When Attorney General or Chief Deputy Attorney General may apply for order authorizing interception of communications.**

A. The Attorney General or Chief Deputy Attorney General, if the Attorney General so designates in writing, in any case where the Attorney General is authorized by law to prosecute or pursuant to a request in his official capacity of an attorney for the Commonwealth in any city or county, may apply to a judge of competent jurisdiction for an order authorizing the interception of wire, electronic or oral communications by the Department of State Police, when such interception may reasonably be expected to provide evidence of the commission of a felonious offense of extortion, bribery, kidnapping, murder, any felony violation of § 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4172, or 18.2-248 ~~or 18.2-248.1~~, any felony violation of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, any felony violation of Article 2 (§ 18.2-38 et seq.), Article 2.1 (§ 18.2-46.1 et seq.), Article 2.2 (§ 18.2-46.4 et seq.), Article 5 (§ 18.2-58 et seq.), Article 6 (§ 18.2-59 et seq.) or any felonies that are not Class 6 felonies in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any conspiracy to commit any of the foregoing offenses. The Attorney General or Chief Deputy Attorney General may apply for authorization for the observation or monitoring of the interception by a police department of a county or city, by a sheriff's office, or by law-enforcement officers of the United States. Such application shall be made, and such order may be granted, in conformity with the provisions of § 19.2-68.

B. The application for an order under subsection B of § 19.2-68 shall be made as follows:

1. In the case of an application for a wire or electronic interception, a judge of competent jurisdiction shall have the authority to issue an order under subsection B of § 19.2-68 if there is probable cause to believe that an offense was committed, is being committed, or will be committed or the person or persons whose communications are to be intercepted live, work, subscribe to a wire or electronic communication system, maintain an address or a post office box, or are making the communication within the territorial jurisdiction of the court.

2. In the case of an application for an oral intercept, a judge of competent jurisdiction shall have the authority to issue an order under subsection B of § 19.2-68 if there is probable cause to believe that an offense was committed, is being committed, or will be committed or the physical location of the oral communication to be intercepted is within the territorial jurisdiction of the court.

C. For the purposes of an order entered pursuant to subsection B of § 19.2-68 for the interception of a wire or electronic communication, such communication shall be deemed to be intercepted in the jurisdiction where the order is entered, regardless of the physical location or the method by which the communication is captured or routed to the monitoring location.

**§ 19.2-81.1. Arrest without warrant by correctional officers in certain cases.**

Any correctional officer, as defined in § 53.1-1, may arrest, in the same manner as provided in § 19.2-81, persons for crimes involving:

- (a) 1. The escape of an inmate from a correctional institution, as defined in § 53.1-1;
- (b) 2. Assisting an inmate to escape from a correctional institution, as defined in § 53.1-1;
- (c) 3. The delivery of contraband to an inmate in violation of § 3.2-4176, 18.2-474, or § 18.2-474.1;

and

(d) 4. Any other criminal offense ~~which~~ *that* may contribute to the disruption of the safety, welfare, or security of the population of a correctional institution.

**§ 19.2-83.1. Report of arrest of school employees and adult students for certain offenses.**

A. Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, upon arresting a person who is known or discovered by the arresting official to be a full-time, part-time, permanent, or temporary teacher or other employee in any public school division in this Commonwealth for a felony or a Class 1 misdemeanor or an equivalent offense in another state shall file a report of such arrest with the division superintendent of the employing division as soon as practicable. The contents of the report required pursuant to this section shall be utilized by the local school division solely to implement the provisions of subsection B of § 22.1-296.2 and § 22.1-315.

B. Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, shall file a report, as soon as

practicable, with the division superintendent of the school division in which the student is enrolled upon arresting a person who is known or discovered by the arresting official to be a student age 18 or older in any public school division in this Commonwealth for:

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 4 (~~§ 18.2-247 et seq.~~) of Chapter 7 of Title 18.2 7 (§ 3.2-4164 et seq.) of Chapter 41.2 of Title 3.2;
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 juveniles for criminal street gang pursuant to § 18.2-46.3;
12. An act of violence by a mob pursuant to § 18.2-42.1; or
13. Abduction of any person pursuant to § 18.2-47 or 18.2-48.

**§ 19.2-120. Admission to bail.**

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or
  2. His liberty will constitute an unreasonable danger to himself or the public.
- B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:
1. An act of violence as defined in § 19.2-297.1;
  2. An offense for which the maximum sentence is life imprisonment or death;
  3. A violation of § 18.2-248, 18.2-248.01, 18.2-255, or 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;
  4. A violation of § 3.2-4175, 18.2-308.1, 18.2-308.2, or 18.2-308.4 and which relates to a firearm and provides for a mandatory minimum sentence;
  5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of the Commonwealth or substantially similar laws of the United States;
  6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;
  7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;
  8. A violation of § 18.2-374.1 or 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person;
  9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5, or 18.2-46.7;
  10. A violation of § 18.2-36.1, 18.2-51.4, 18.2-266, or 46.2-341.24 and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction;
  11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4 or a substantially similar offense under the laws of any state or the United States;
  12. A violation of subsection B of § 18.2-57.2;
  13. A violation of subsection C of § 18.2-460 charging the use of threats of bodily harm or force to



3749 knowingly attempt to intimidate or impede a witness;

3750 14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in  
3751 § 16.1-228; or

3752 15. A violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1.

3753 C. The judicial officer shall presume, subject to rebuttal, that no condition or combination of  
3754 conditions will reasonably assure the appearance of the person or the safety of the public if the person is  
3755 being arrested pursuant to § 19.2-81.6.

3756 D. A judicial officer who is a magistrate, clerk, or deputy clerk of a district court or circuit court  
3757 may not admit to bail, that is not set by a judge, any person who is charged with an offense giving rise  
3758 to a rebuttable presumption against bail as set out in subsection B or C without the concurrence of an  
3759 attorney for the Commonwealth. For a person who is charged with an offense giving rise to a rebuttable  
3760 presumption against bail, any judge may set or admit such person to bail in accordance with this section  
3761 after notice and an opportunity to be heard has been provided to the attorney for the Commonwealth.

3762 E. The court shall consider the following factors and such others as it deems appropriate in  
3763 determining, for the purpose of rebuttal of the presumption against bail described in subsection B,  
3764 whether there are conditions of release that will reasonably assure the appearance of the person as  
3765 required and the safety of the public:

3766 1. The nature and circumstances of the offense charged;

3767 2. The history and characteristics of the person, including his character, physical and mental  
3768 condition, family ties, employment, financial resources, length of residence in the community,  
3769 community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in  
3770 a criminal street gang as defined in § 18.2-46.1, and record concerning appearance at court proceedings;  
3771 and

3772 3. The nature and seriousness of the danger to any person or the community that would be posed by  
3773 the person's release.

3774 F. The judicial officer shall inform the person of his right to appeal from the order denying bail or  
3775 fixing terms of bond or recognizance consistent with § 19.2-124.

3776 G. If the judicial officer sets a secured bond and the person engages the services of a licensed bail  
3777 bondsman, the magistrate executing recognizance for the accused shall provide the bondsman, upon  
3778 request, with a copy of the person's Virginia criminal history record, if readily available, to be used by  
3779 the bondsman only to determine appropriate reporting requirements to impose upon the accused upon his  
3780 release. The bondsman shall pay a \$15 fee payable to the state treasury to be credited to the Literary  
3781 Fund, upon requesting the defendant's Virginia criminal history record issued pursuant to § 19.2-389.  
3782 The bondsman shall review the record on the premises and promptly return the record to the magistrate  
3783 after reviewing it.

3784 **§ 19.2-188.1. Testimony regarding identification of controlled substances.**

3785 A. In any preliminary hearing on a violation of Article 7 (§ 3.2-4164 et seq.) of Chapter 41.2 of Title  
3786 3.2, a violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or a violation of subdivision  
3787 6 of § 53.1-203, any law-enforcement officer shall be permitted to testify as to the results of field tests  
3788 that have been approved by the Department of Forensic Science pursuant to regulations adopted in  
3789 accordance with the Administrative Process Act (§ 2.2-4000 et seq.), regarding whether or not any  
3790 substance the identity of which is at issue in such hearing is a controlled substance, imitation controlled  
3791 substance, or marijuana, as defined in §§ 3.2-4121 and 18.2-247.

3792 B. In any trial for a violation of ~~§ 18.2-250.1~~ 3.2-4164 or 3.2-4165, any law-enforcement officer  
3793 shall be permitted to testify as to the results of any marijuana field test approved as accurate and  
3794 reliable by the Department of Forensic Science pursuant to regulations adopted in accordance with the  
3795 Administrative Process Act (§ 2.2-4000 et seq.), regarding whether or not any plant material, the identity  
3796 of which is at issue, is marijuana provided the defendant has been given written notice of his right to  
3797 request a full chemical analysis. Such notice shall be on a form approved by the Supreme Court and  
3798 shall be provided to the defendant prior to trial.

3799 In any case in which the person accused of a violation of ~~§ 18.2-250.1~~ 3.2-4164 or 3.2-4165, or the  
3800 attorney of record for the accused, desires a full chemical analysis of the alleged plant material, he may,  
3801 by motion prior to trial before the court in which the charge is pending, request such a chemical  
3802 analysis. Upon such motion, the court shall order that the analysis be performed by the Department of  
3803 Forensic Science and shall prescribe in its order the method of custody, transfer, and return of evidence  
3804 submitted for chemical analysis.

3805 **§ 19.2-303.01. Reduction of sentence; substantial assistance to prosecution.**

3806 Notwithstanding any other provision of law or rule of court, upon motion of the attorney for the  
3807 Commonwealth, the sentencing court may reduce the defendant's sentence if the defendant, after entry of  
3808 the final judgment order, provided substantial assistance in investigating or prosecuting another person  
3809 for (i) an act of violence as defined in § 19.2-297.1 or any violation of § 3.2-4167 or 3.2-4169,  
3810 subsection B of § 3.2-4170, or § 3.2-4171, 3.2-4172, 3.2-4174, 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 in any other jurisdiction, which offense would be a felony if committed in the Commonwealth; (ii) a conspiracy to commit any of the offenses listed in clause (i); or (iii) violations as a principal in the second degree or accessory before the fact of any of the offenses listed in clause (i). In determining whether the defendant has provided substantial assistance pursuant to the provisions of this section, the court shall consider (a) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the Commonwealth's evaluation of the assistance rendered; (b) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant; (c) the nature and extent of the defendant's assistance; (d) any injury suffered or any danger or risk of injury to the defendant or his family resulting from his assistance; and (e) the timeliness of the defendant's assistance. If the motion is made more than one year after entry of the final judgment order, the court may reduce a sentence only if the defendant's substantial assistance involved (1) information not known to the defendant until more than one year after entry of the final judgment order, (2) information provided by the defendant within one year of entry of the final judgment order but that did not become useful to the Commonwealth until more than one year after entry of the final judgment order, or (3) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after entry of the final judgment order and which was promptly provided to the Commonwealth by the defendant after its usefulness was reasonably apparent.

**§ 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 7 (§ 3.2-4164 et seq.) of Chapter 41.2 of Title 3.2 or 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 marijuana in violation of subdivisions (a)(2), (a)(3) and (c) of § ~~18.2-248.1~~ § 3.2-4167 or subdivisions B 2 and 3 of § 3.2-4169, 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~~ 3.2-4169 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.).

**§ 19.2-386.23. Disposal of seized controlled substances, marijuana, and paraphernalia.**

A. All controlled substances, imitation controlled substances, marijuana, or paraphernalia, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of *Article 7 (§ 3.2-4164 et seq.) of Chapter 41.2 of Title 3.2 or Chapter 7 (§ 18.2-247 et seq.) of Title 18.2*, shall be forfeited and disposed of as follows:

1. Upon written application by (i) the Department of Forensic Science, (ii) the Department of State Police, or (iii) any police department or sheriff's office in a locality, the court may order the forfeiture of any such substance or paraphernalia to the Department of Forensic Science, the Department of State Police, or to such police department or sheriff's office for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1, the court shall order the destruction of all such substances or paraphernalia, which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of § 18.2-265.1 not be destroyed and that it be given to a person or entity that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and publicly beneficial use. A return under oath, reporting the time, place, and manner of destruction, shall be made to the court by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is

3872 given, or otherwise comes into possession of any such substances or paraphernalia that are not evidence  
3873 in a trial in the Commonwealth, the chief law-enforcement officer of the agency or his designee may,  
3874 with the written consent of the appropriate attorney for the Commonwealth, order destruction of same;  
3875 provided that a statement under oath, reporting a description of the substances and paraphernalia  
3876 destroyed and the time, place and manner of destruction, is made to the chief law-enforcement officer  
3877 by the officer to whom the order is directed.

3878 B. No such substance or paraphernalia used or to be used in a criminal prosecution under *Article 7*  
3879 (*§ 3.2-4164 et seq.*) of *Chapter 41.2 of Title 3.2* or *Chapter 7* (*§ 18.2-247 et seq.*) of *Title 18.2* shall be  
3880 disposed of as provided by this section until all rights of appeal have been exhausted, except as  
3881 provided in *§ 19.2-386.24*.

3882 C. The amount of any specific controlled substance, or imitation controlled substance, retained by  
3883 any law-enforcement agency pursuant to a court order issued under this section shall not exceed five  
3884 pounds, or 25 pounds in the case of marijuana. Any written application to the court for controlled  
3885 substances, imitation controlled substances, or marijuana, shall certify that the amount requested shall  
3886 not result in the requesting agency's exceeding the limits allowed by this subsection.

3887 D. A law-enforcement agency that retains any controlled substance, imitation controlled substance, or  
3888 marijuana, pursuant to a court order issued under this section shall (i) be required to conduct an  
3889 inventory of such substance on a monthly basis, which shall include a description and weight of the  
3890 substance, and (ii) destroy such substance pursuant to subdivision A 1 when no longer needed for  
3891 research and training purposes. A written report outlining the details of the inventory shall be made to  
3892 the chief law-enforcement officer of the agency within 10 days of the completion of the inventory, and  
3893 the agency shall detail the substances that were used for research and training pursuant to a court order  
3894 in the immediately preceding fiscal year. Destruction of such substance shall be certified to the court  
3895 along with a statement prepared under oath, reporting a description of the substance destroyed, and the  
3896 time, place, and manner of destruction.

3897 **§ 19.2-386.24. Destruction of seized controlled substances or marijuana prior to trial.**

3898 Where seizures of controlled substances or marijuana are made in excess of 10 pounds in connection  
3899 with any prosecution or investigation under *Article 7* (*§ 3.2-4164 et seq.*) of *Chapter 41.2 of Title 3.2* or  
3900 *Chapter 7* (*§ 18.2-247 et seq.*) of *Title 18.2*, the appropriate law-enforcement agency may retain 10  
3901 pounds of the substance randomly selected from the seized substance for representative purposes as  
3902 evidence and destroy the remainder of the seized substance.

3903 Before any destruction is carried out under this section, the law-enforcement agency shall cause the  
3904 material seized to be photographed with identification case numbers or other means of identification and  
3905 shall prepare a report identifying the seized material. It shall also notify the accused, or other interested  
3906 party, if known, or his attorney, at least five days in advance that the photography will take place and  
3907 that they may be present. Prior to any destruction under this section, the law-enforcement agency shall  
3908 also notify the accused or other interested party, if known, and his attorney at least seven days prior to  
3909 the destruction of the time and place the destruction will occur. Any notice required under the  
3910 provisions of this section shall be by first-class mail to the last known address of the person required to  
3911 be notified. In addition to the substance retained for representative purposes as evidence, all photographs  
3912 and records made under this section and properly identified shall be admissible in any court proceeding  
3913 for any purposes for which the seized substance itself would have been admissible.

3914 **§ 19.2-386.25. Judge may order law-enforcement agency to maintain custody of controlled**  
3915 **substances, etc.**

3916 Upon request of the clerk of any court, a judge of the court may order a law-enforcement agency to  
3917 take into its custody or to maintain custody of substantial quantities of any controlled substances,  
3918 imitation controlled substances, chemicals, marijuana, or paraphernalia used or to be used in a criminal  
3919 prosecution under *Article 7* (*§ 3.2-4164 et seq.*) of *Chapter 41.2 of Title 3.2* or *Chapter 7* (*§ 18.2-247 et*  
3920 *seq.*) of *Title 18.2*. The court in its order may make provision for ensuring integrity of these items until  
3921 further order of the court.

3922 **§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported, or carried in**  
3923 **violation of law.**

3924 Any firearm, any stun weapon as defined by *§ 18.2-308.1*, or any weapon concealed, possessed,  
3925 transported, or carried in violation of *§ 3.2-4175*, *18.2-283.1*, *18.2-287.01*, *18.2-287.4*, *18.2-308.1:2*,  
3926 *18.2-308.1:3*, *18.2-308.1:4*, *18.2-308.2*, *18.2-308.2:01*, *18.2-308.2:1*, *18.2-308.4*, *18.2-308.5*, *18.2-308.7*,  
3927 or *18.2-308.8* shall be forfeited to the Commonwealth and disposed of as provided in *§ 19.2-386.29*.

3928 **§ 19.2-389. (Effective until January 1, 2021) Dissemination of criminal history record**  
3929 **information.**

3930 A. Criminal history record information shall be disseminated, whether directly or through an  
3931 intermediary, only to:

3932 1. Authorized officers or employees of criminal justice agencies, as defined by *§ 9.1-101*, for  
3933 purposes of the administration of criminal justice and the screening of an employment application or

review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

3995 12. Administrators and board presidents of and applicants for licensure or registration as a child  
3996 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
3997 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
3998 volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved  
3999 by family day systems, and foster and adoptive parent applicants of private child-placing agencies,  
4000 pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction  
4001 that the data shall not be further disseminated by the facility or agency to any party other than the data  
4002 subject, the Commissioner of Social Services' representative or a federal or state authority or court as  
4003 may be required to comply with an express requirement of law for such further dissemination;

4004 13. The school boards of the Commonwealth for the purpose of screening individuals who are  
4005 offered or who accept public school employment and those current school board employees for whom a  
4006 report of arrest has been made pursuant to § 19.2-83.1;

4007 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
4008 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of  
4009 investigations as set forth in *Article 1 (§ 3.2-4121 et seq.) of Chapter 41.2 of Title 3.2 and Article 1.1:1*  
4010 *(§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;*

4011 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations  
4012 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital  
4013 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject  
4014 to the limitations set out in subsection E;

4015 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of  
4016 investigations of applicants for compensated employment in licensed assisted living facilities and  
4017 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

4018 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth  
4019 in § 4.1-103.1;

4020 18. The State Board of Elections and authorized officers and employees thereof and general registrars  
4021 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to  
4022 voter registration, limited to any record of felony convictions;

4023 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
4024 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
4025 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

4026 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
4027 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first  
4028 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

4029 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the  
4030 Department of Education, or the Department of Behavioral Health and Developmental Services for the  
4031 purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
4032 services;

4033 22. The Department of Behavioral Health and Developmental Services and facilities operated by the  
4034 Department for the purpose of determining an individual's fitness for employment pursuant to  
4035 departmental instructions;

4036 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
4037 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
4038 records information on behalf of such governing boards or administrators pursuant to a written  
4039 agreement with the Department of State Police;

4040 24. Public institutions of higher education and nonprofit private institutions of higher education for  
4041 the purpose of screening individuals who are offered or accept employment;

4042 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,  
4043 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of  
4044 higher education, for the purpose of assessing or intervening with an individual whose behavior may  
4045 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal  
4046 history record information obtained pursuant to this section or otherwise use any record of an individual  
4047 beyond the purpose that such disclosure was made to the threat assessment team;

4048 26. Executive directors of community services boards or the personnel director serving the  
4049 community services board for the purpose of determining an individual's fitness for employment,  
4050 approval as a sponsored residential service provider, or permission to enter into a shared living  
4051 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to  
4052 §§ 37.2-506 and 37.2-607;

4053 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
4054 determining an individual's fitness for employment, approval as a sponsored residential service provider,  
4055 or permission to enter into a shared living arrangement with a person receiving medical assistance  
4056 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of

4118 a juvenile's household when completing a predispositional or postdispositional report required by §  
4119 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

4120 45. Other entities as otherwise provided by law.

4121 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records  
4122 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal  
4123 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons  
4124 designated in the order on whom a report has been made under the provisions of this chapter.

4125 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to  
4126 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the  
4127 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a  
4128 copy of conviction data covering the person named in the request to the person making the request;  
4129 however, such person on whom the data is being obtained shall consent in writing, under oath, to the  
4130 making of such request. A person receiving a copy of his own conviction data may utilize or further  
4131 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data  
4132 subject, the person making the request shall be furnished at his cost a certification to that effect.

4133 B. Use of criminal history record information disseminated to noncriminal justice agencies under this  
4134 section shall be limited to the purposes for which it was given and may not be disseminated further.

4135 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal  
4136 history record information for employment or licensing inquiries except as provided by law.

4137 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records  
4138 Exchange prior to dissemination of any criminal history record information on offenses required to be  
4139 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is  
4140 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases  
4141 where time is of the essence and the normal response time of the Exchange would exceed the necessary  
4142 time period. A criminal justice agency to whom a request has been made for the dissemination of  
4143 criminal history record information that is required to be reported to the Central Criminal Records  
4144 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.  
4145 Dissemination of information regarding offenses not required to be reported to the Exchange shall be  
4146 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

4147 E. Criminal history information provided to licensed nursing homes, hospitals and to home care  
4148 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange  
4149 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

4150 F. Criminal history information provided to licensed assisted living facilities and licensed adult day  
4151 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange  
4152 for any offense specified in § 63.2-1720.

4153 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be  
4154 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the  
4155 definition of barrier crime in § 19.2-392.02.

4156 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal  
4157 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the  
4158 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in  
4159 the request to the employer or prospective employer making the request, provided that the person on  
4160 whom the data is being obtained has consented in writing to the making of such request and has  
4161 presented a photo-identification to the employer or prospective employer. In the event no conviction data  
4162 is maintained on the person named in the request, the requesting employer or prospective employer shall  
4163 be furnished at his cost a certification to that effect. The criminal history record search shall be  
4164 conducted on forms provided by the Exchange.

4165 I. Nothing in this section shall preclude the dissemination of a person's criminal history record  
4166 information pursuant to the rules of court for obtaining discovery or for review by the court.

4167 **§ 19.2-389. (Effective January 1, 2021) Dissemination of criminal history record information.**

4168 A. Criminal history record information shall be disseminated, whether directly or through an  
4169 intermediary, only to:

4170 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for  
4171 purposes of the administration of criminal justice and the screening of an employment application or  
4172 review of employment by a criminal justice agency with respect to its own employees or applicants, and  
4173 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all  
4174 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,  
4175 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For  
4176 purposes of this subdivision, criminal history record information includes information sent to the Central  
4177 Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time  
4178 or part-time employee of the State Police, a police department or sheriff's office that is a part of or  
4179 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the



prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as

4241 may be required to comply with an express requirement of law for such further dissemination;

4242 13. The school boards of the Commonwealth for the purpose of screening individuals who are  
4243 offered or who accept public school employment and those current school board employees for whom a  
4244 report of arrest has been made pursuant to § 19.2-83.1;

4245 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
4246 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of  
4247 investigations as set forth in *Article 1 (§ 3.2-4121 et seq.) of Chapter 41.2 of Title 3.2 and Article 1.1:1*  
4248 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

4249 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations  
4250 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital  
4251 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject  
4252 to the limitations set out in subsection E;

4253 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of  
4254 investigations of applicants for compensated employment in licensed assisted living facilities and  
4255 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

4256 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth  
4257 in § 4.1-103.1;

4258 18. The State Board of Elections and authorized officers and employees thereof and general registrars  
4259 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to  
4260 voter registration, limited to any record of felony convictions;

4261 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
4262 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
4263 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

4264 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
4265 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first  
4266 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

4267 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the  
4268 Department of Education, or the Department of Behavioral Health and Developmental Services for the  
4269 purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
4270 services;

4271 22. The Department of Behavioral Health and Developmental Services and facilities operated by the  
4272 Department for the purpose of determining an individual's fitness for employment pursuant to  
4273 departmental instructions;

4274 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
4275 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
4276 records information on behalf of such governing boards or administrators pursuant to a written  
4277 agreement with the Department of State Police;

4278 24. Public institutions of higher education and nonprofit private institutions of higher education for  
4279 the purpose of screening individuals who are offered or accept employment;

4280 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,  
4281 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of  
4282 higher education, for the purpose of assessing or intervening with an individual whose behavior may  
4283 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal  
4284 history record information obtained pursuant to this section or otherwise use any record of an individual  
4285 beyond the purpose that such disclosure was made to the threat assessment team;

4286 26. Executive directors of community services boards or the personnel director serving the  
4287 community services board for the purpose of determining an individual's fitness for employment,  
4288 approval as a sponsored residential service provider, or permission to enter into a shared living  
4289 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to  
4290 §§ 37.2-506 and 37.2-607;

4291 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
4292 determining an individual's fitness for employment, approval as a sponsored residential service provider,  
4293 or permission to enter into a shared living arrangement with a person receiving medical assistance  
4294 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

4295 28. The Commissioner of Social Services for the purpose of locating persons who owe child support  
4296 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the  
4297 name, address, demographics and social security number of the data subject shall be released;

4298 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
4299 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
4300 purpose of determining if any applicant who accepts employment in any direct care position or requests  
4301 approval as a sponsored residential service provider or permission to enter into a shared living  
4302 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted

of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2; and

46. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons

designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

**§ 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 § 3.2-4175, 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, 18.2-370.5, 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 § 3.2-4176, 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 § 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4171, 3.2-4172, 3.2-4174, 3.2-4177, 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 convicted, the disposition of the charge, and any other information that may be useful in identifying persons arrested for or convicted of a barrier crime.

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

"Department" means the Department of State Police.

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

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

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

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

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

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

C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection B, the Department shall make a determination whether the provider has been convicted of or

4487 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier  
4488 crime information, the Department shall access the national criminal history background check system,  
4489 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other  
4490 methods of identification, and shall access the Central Criminal Records Exchange maintained by the  
4491 Department. If the Department receives a background report lacking disposition data, the Department  
4492 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain  
4493 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry  
4494 within 15 business days.

4495 D. Any background check conducted pursuant to this section for a provider employed by a private  
4496 entity shall be screened by the Department of State Police. If the provider has been convicted of or is  
4497 under indictment for a barrier crime, the qualified entity shall be notified that the provider is not  
4498 qualified to work or volunteer in a position that involves unsupervised access to children or the elderly  
4499 or disabled.

4500 E. Any background check conducted pursuant to this section for a provider employed by a  
4501 governmental entity shall be provided to that entity.

4502 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a  
4503 national criminal background check, the Department and the Federal Bureau of Investigation may each  
4504 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted  
4505 with the fingerprints.

4506 G. The failure to request a criminal background check pursuant to subsection B shall not be  
4507 considered negligence per se in any civil action.

4508 H. (Expires July 1, 2020) Notwithstanding any provisions in this section to the contrary, a spouse of  
4509 a birth parent or parent by adoption who is not the birth parent of a child and has filed a petition for  
4510 adoption of such child in circuit court may request the Department of State Police to conduct a national  
4511 criminal background check on such prospective adoptive parent at his cost for purposes of § 63.2-1242.  
4512 Such background checks shall otherwise be conducted in accordance with the provisions of this section.

4513 **§ 22.1-277.08. Expulsion of students for certain drug offenses.**

4514 A. School boards shall expel from school attendance any student whom such school board has  
4515 determined, in accordance with the procedures set forth in this article, to have brought a controlled  
4516 substance, imitation controlled substance, or marijuana as defined in § ~~18.2-247~~ 3.2-4121 onto school  
4517 property or to a school-sponsored activity. A school administrator, pursuant to school board policy, or a  
4518 school board may, however, determine, based on the facts of a particular situation, that special  
4519 circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion  
4520 is appropriate. A school board may, by regulation, authorize the division superintendent or his designee  
4521 to conduct a preliminary review of such cases to determine whether a disciplinary action other than  
4522 expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another  
4523 disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance  
4524 with the procedures set forth in this article. Nothing in this section shall be construed to require a  
4525 student's expulsion regardless of the facts of the particular situation.

4526 B. Each school board shall revise its standards of student conduct to incorporate the requirements of  
4527 this section no later than three months after the date on which this act becomes effective.

4528 **§ 24.2-233. Removal of elected and certain appointed officers by courts.**

4529 Upon petition, a circuit court may remove from office any elected officer or officer who has been  
4530 appointed to fill an elective office, residing within the jurisdiction of the court:

4531 1. For neglect of duty, misuse of office, or incompetence in the performance of duties when that  
4532 neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse  
4533 effect upon the conduct of the office;

4534 2. Upon conviction of a misdemeanor pursuant to *Article 7* (§ 3.2-4164 *et seq.*) of *Chapter 41.2 of*  
4535 *Title 3.2 or Article 1* (§ 18.2-247 *et seq.*) or ~~Article 1.1~~ (§ 18.2-265.1 *et seq.*) of *Chapter 7 of Title 18.2*  
4536 and after all rights of appeal have terminated involving the:

4537 a. Manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or  
4538 distribute a controlled substance or marijuana;

4539 b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug  
4540 paraphernalia; or

4541 c. Possession of any controlled substance or marijuana and such conviction under subdivision a, b, or  
4542 c has a material adverse effect upon the conduct of such office;

4543 3. Upon conviction, and after all rights of appeal have terminated, of a misdemeanor involving a  
4544 "hate crime" as that term is defined in § 52-8.5 when the conviction has a material adverse effect upon  
4545 the conduct of such office; or

4546 4. Upon conviction, and after all rights of appeal have terminated, of sexual battery in violation of  
4547 § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, peeping or spying into  
4548 dwelling or enclosure in violation of § 18.2-130, consensual sexual intercourse with a child 15 years of

age or older in violation of § 18.2-371, or indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, and such conviction has a material adverse effect upon the conduct of such office.

The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to ~~ten~~ 10 percent of the total number of votes cast at the last election for the office that the officer holds.

Any person removed from office under the provisions of subdivision 2, 3, or 4 may not be subsequently subject to the provisions of this section for the same criminal offense.

**§ 37.2-416. Background checks required.**

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same licensee licensed pursuant to this article or (b) new employment in any mental health or developmental services direct care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts employment in any direct care position, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall:

1. Hire for compensated employment any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;

2. Approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date to be a sponsored residential service provider or (b) such applicant continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02; or

3. Permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a shared living arrangement or (b) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed

pursuant to this article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse or adult mental health treatment facilities a person who was convicted of any violation of § 18.2-51.3; a misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to *subsections B and C of § 3.2-4172* or subsections H1 and H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse treatment facilities a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a shared living arrangement persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A provider may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Providers licensed pursuant to this article also shall require, as a condition of employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

J. Notwithstanding any other provision of law, a provider licensed pursuant to this article that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a



criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

**§ 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 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, (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.

**§ 52-35. Witness protection program established.**

The Superintendent of State Police may establish and maintain within the Department of State Police a witness protection program to temporarily relocate or otherwise protect witnesses and their families who may be in danger because of their cooperation with the investigation and prosecution of serious violent crimes, felony violations of § 18.2-248, and violations of §§ 3.2-4172, 18.2-57.2, 18.2-67.5:1, 18.2-67.5:2, and 18.2-67.5:3. The Superintendent may make the services of the program available to law-enforcement and criminal justice agencies of all counties, cities, and towns, and of the Commonwealth, pursuant to regulations promulgated by the Superintendent under the Administrative Process Act. (§ 2.2-4000 et seq.).

**§ 53.1-231.2. Restoration of the civil right to be eligible to register to vote to certain persons.**

This section shall apply to any person who is not a qualified voter because of a felony conviction, who seeks to have his right to register to vote restored and become eligible to register to vote, and who meets the conditions and requirements set out in this section.

Any person, other than a person (i) convicted of a violent felony as defined in § 19.2-297.1 or in subsection C of § 17.1-805 and any crime ancillary thereto; (ii) convicted of a felony pursuant to §§ 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4171, 3.2-4172, 3.2-4174, 3.2-4177, 18.2-248, 18.2-248.01, ~~18.2-248.1,~~ 18.2-255, 18.2-255.2, or § 18.2-258.02; or (iii) convicted of a felony pursuant to § 24.2-1016, may petition the circuit court of the county or city in which he was convicted of a felony, or the circuit court of the county or city in which he presently resides, for restoration of his civil right to be eligible to register to vote through the process set out in this section. On such petition, the court may approve the petition for restoration to the person of his right if the court is satisfied from the evidence presented that the petitioner has completed, five or more years previously, service of any sentence and any modification of sentence including probation, parole, and suspension of sentence; that the petitioner has demonstrated civic responsibility through community or comparable service; and that the petitioner has been free from criminal convictions, excluding traffic infractions, for the same period.

If the court approves the petition, it shall so state in an order, provide a copy of the order to the petitioner, and transmit its order to the Secretary of the Commonwealth. The order shall state that the petitioner's right to be eligible to register to vote may be restored by the date that is 90 days after the date of the order, subject to the approval or denial of restoration of that right by the Governor. The Secretary of the Commonwealth shall transmit the order to the Governor who may grant or deny the petition for restoration of the right to be eligible to register to vote approved by the court order. The Secretary of the Commonwealth shall send, within 90 days of the date of the order, to the petitioner at the address stated on the court's order, a certificate of restoration of that right or notice that the Governor has denied the restoration of that right. The Governor's denial of a petition for the restoration of voting rights shall be a final decision and the petitioner shall have no right of appeal. The Secretary shall notify the court and the State Board of Elections in each case of the restoration of the right or denial of restoration by the Governor.

On receipt of the certificate of restoration of the right to register to vote from the Secretary of the Commonwealth, the petitioner, who is otherwise a qualified voter, shall become eligible to register to vote.

**§ 54.1-2903. What constitutes practice; advertising in connection with medical practice.**

A. Any person shall be regarded as practicing the healing arts who actually engages in such practice as defined in this chapter, or who opens an office for such purpose, or who advertises or announces to the public in any manner a readiness to practice or who uses in connection with his name the words or letters "Doctor," "Dr.," "M.D.," "D.O.," "D.P.M.," "D.C.," "Healer," "N.P.," or any other title, word, letter or designation intending to designate or imply that he is a practitioner of the healing arts or that he is able to heal, cure or relieve those suffering from any injury, deformity or disease.

Signing a birth or death certificate, or signing any statement certifying that the person so signing has rendered professional service to the sick or injured, or signing or issuing a prescription for drugs or other remedial agents, shall be prima facie evidence that the person signing or issuing such writing is practicing the healing arts within the meaning of this chapter except where persons other than physicians are required to sign birth certificates.

B. No person regulated under this chapter shall use the title "Doctor" or the abbreviation "Dr." in writing or in advertising in connection with his practice unless he simultaneously uses words, initials, an abbreviation or designation, or other language that identifies the type of practice for which he is licensed. No person regulated under this chapter shall include in any advertisement a reference to marijuana, as defined in § 18.2-247.3.2-4121, unless such advertisement is for the treatment of addiction or substance abuse. However, nothing in this subsection shall prevent a person from including in any advertisement that such person is registered with the Board of Pharmacy to issue written certifications for the use of cannabidiol oil or THC-A oil, as defined in § 54.1-3408.3.

**§ 54.1-3408.3. Certification for use of cannabidiol oil or THC-A oil for treatment.**

A. As used in this section:

"Cannabidiol oil" means any formulation of processed Cannabis plant extract that contains at least 15 percent cannabidiol but no more than five percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least five milligrams of cannabidiol per dose but not more than five percent tetrahydrocannabinol. "Cannabidiol oil" does not include industrial hemp, as defined in § 3.2-4112, that is grown, dealt, or processed in compliance with state or federal law.

"Practitioner" means a practitioner of medicine or osteopathy licensed by the Board of Medicine, a physician assistant licensed by the Board of Medicine, or a nurse practitioner jointly licensed by the Board of Medicine and the Board of Nursing.

"Registered agent" means an individual designated by a patient who has been issued a written certification, or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, designated by such patient's parent or legal guardian, and registered with the Board pursuant to subsection G.

"THC-A oil" means any formulation of processed Cannabis plant extract that contains at least 15 percent tetrahydrocannabinol acid but not more than five percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least five milligrams of tetrahydrocannabinol acid per dose but not more than five percent tetrahydrocannabinol.

B. A practitioner in the course of his professional practice may issue a written certification for the use of cannabidiol oil or THC-A oil for treatment or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.

C. The written certification shall be on a form provided by the Office of the Executive Secretary of the Supreme Court developed in consultation with the Board of Medicine. Such written certification shall contain the name, address, and telephone number of the practitioner, the name and address of the patient issued the written certification, the date on which the written certification was made, and the signature of the practitioner. Such written certification issued pursuant to subsection B shall expire no later than one year after its issuance unless the practitioner provides in such written certification an earlier expiration.

D. No practitioner shall be prosecuted under § 3.2-4169, subsection B of § 3.2-4170, or § 3.2-4172 or 18.2-248 ~~or 18.2-248.1~~ for dispensing or distributing cannabidiol oil or THC-A oil for the treatment or to alleviate the symptoms of a patient's diagnosed condition or disease pursuant to a written certification issued pursuant to subsection B. Nothing in this section shall preclude the Board of Medicine from sanctioning a practitioner for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

E. A practitioner who issues a written certification to a patient pursuant to this section shall register with the Board. The Board shall, in consultation with the Board of Medicine, set a limit on the number of patients to whom a practitioner may issue a written certification.

F. A patient who has been issued a written certification shall register with the Board or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, a patient's parent or legal guardian shall register and shall register such patient with the Board.

G. A patient, or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, such patient's parent or legal guardian, may designate an individual to act as his registered agent for the

purposes of receiving cannabidiol oil or THC-A oil pursuant to a valid written certification. Such designated individual shall register with the Board. The Board may set a limit on the number patients for whom any individual is authorized to act as a registered agent.

H. The Board shall promulgate regulations to implement the registration process. Such regulations shall include (i) a mechanism for sufficiently identifying the practitioner issuing the written certification, the patient being treated by the practitioner, his registered agent, and, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, the patient's parent or legal guardian; (ii) a process for ensuring that any changes in the information are reported in an appropriate timeframe; and (iii) a prohibition for the patient to be issued a written certification by more than one practitioner during any given time period.

I. Information obtained under the registration process shall be confidential and shall not be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, reasonable access to registry information shall be provided to (i) the Chairmen of the House and Senate Committees for Courts of Justice, (ii) state and federal agencies or local law enforcement for the purpose of investigating or prosecuting a specific individual for a specific violation of law, (iii) licensed physicians or pharmacists for the purpose of providing patient care and drug therapy management and monitoring of drugs obtained by a registered patient, (iv) a pharmaceutical processor involved in the treatment of a registered patient, or (v) a registered patient, his registered agent, or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, the patient's parent or legal guardian, but only with respect to information related to such registered patient.

**§ 54.1-3442.6. Permit to operate pharmaceutical processor.**

A. No person shall operate a pharmaceutical processor without first obtaining a permit from the Board. The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmaceutical processor. The Board shall establish an application fee and other general requirements for such application.

B. Each permit shall expire annually on a date determined by the Board in regulation. The number of permits that the Board may issue or renew in any year is limited to one for each health service area established by the Board of Health. Permits shall be displayed in a conspicuous place on the premises of the pharmaceutical processor.

C. The Board shall adopt regulations establishing health, safety, and security requirements for pharmaceutical processors. Such regulations shall include requirements for (i) physical standards; (ii) location restrictions; (iii) security systems and controls; (iv) minimum equipment and resources; (v) recordkeeping; (vi) labeling and packaging; (vii) quarterly inspections; (viii) processes for safely and securely cultivating Cannabis plants intended for producing cannabidiol oil and THC-A oil, producing cannabidiol oil and THC-A oil, and dispensing and delivering in person cannabidiol oil and THC-A oil to a registered patient, his registered agent, or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, such patient's parent or legal guardian; (ix) a maximum number of marijuana plants a pharmaceutical processor may possess at any one time; (x) the secure disposal of plant remains; (xi) a process for registering a cannabidiol oil and THC-A oil product; (xii) dosage limitations, which shall provide that each dispensed dose of cannabidiol oil or THC-A not exceed 10 milligrams of tetrahydrocannabinol; and (xiii) a process for the wholesale distribution of and the transfer of cannabidiol oil and THC-A oil products between pharmaceutical processors.

D. Every pharmaceutical processor shall be under the personal supervision of a licensed pharmacist on the premises of the pharmaceutical processor.

E. The Board shall require an applicant for a pharmaceutical processor permit to submit to fingerprinting and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant. The cost of fingerprinting and the criminal history record search shall be paid by the applicant. The Central Criminal Records Exchange shall forward the results of the criminal history background check to the Board or its designee, which shall be a governmental entity.

F. In addition to other employees authorized by the Board, a pharmaceutical processor may employ individuals who may have less than two years of experience (i) to perform cultivation-related duties under the supervision of an individual who has received a degree in horticulture or a certification recognized by the Board or who has at least two years of experience cultivating plants and (ii) to perform extraction-related duties under the supervision of an individual who has a degree in chemistry or pharmacology or at least two years of experience extracting chemicals from plants.

G. No person who has been convicted of (i) a felony under the laws of the Commonwealth or another jurisdiction or (ii) within the last five years, any offense in violation of *Article 7* (§ 3.2-4164 et seq.) of *Chapter 41.2 of Title 3.2* or *Article 1* (§ 18.2-247 et seq.) or *Article 1.1* (§ 18.2-265.1 et seq.) of *Chapter 7 of Title 18.2* or a substantially similar offense under the laws of another jurisdiction shall

4856 be employed by or act as an agent of a pharmaceutical processor.

4857 H. Every pharmaceutical processor shall adopt policies for pre-employment drug screening and  
4858 regular, ongoing, random drug screening of employees.

4859 **§ 54.1-3442.8. Criminal liability; exceptions.**

4860 In any prosecution of an agent or employee of a pharmaceutical processor under § ~~18.2-248,~~  
4861 ~~18.2-248.1, 3.2-4164, 3.2-4165, 3.2-4167, 3.2-4169, 3.2-4170, 3.2-4172, or 18.2-250; or 18.2-250.1~~ for  
4862 possession or manufacture of marijuana or for possession, manufacture, or distribution of cannabidiol oil  
4863 or THC-A oil, it shall be an affirmative defense that such agent or employee (i) possessed or  
4864 manufactured such marijuana for the purposes of producing cannabidiol oil or THC-A oil in accordance  
4865 with the provisions of this article and Board regulations or (ii) possessed, manufactured, or distributed  
4866 such cannabidiol oil or THC-A oil in accordance with the provisions of this article and Board  
4867 regulations. If such agent or employee files a copy of the permit issued to the pharmaceutical processor  
4868 pursuant to § 54.1-3442.6 with the court at least 10 days prior to trial and causes a copy of such permit  
4869 to be delivered to the attorney for the Commonwealth, such permit shall be prima facie evidence that (a)  
4870 such marijuana was possessed or manufactured for the purposes of producing cannabidiol oil or THC-A  
4871 oil in accordance with the provisions of this article and Board regulations or (b) such cannabidiol oil or  
4872 THC-A oil was possessed, manufactured, or distributed in accordance with the provisions of this article  
4873 and Board regulations.

4874 **2. That §§ 18.2-248.1, 18.2-250.1, and 18.2-251.1 of the Code of Virginia are repealed.**

4875 **3. That the Board of Agriculture and Consumer Services shall begin receiving applications for**  
4876 **marijuana establishments within one year of the effective date of this act. For two years after the**  
4877 **Board begins to receive applications for marijuana establishments, the Board shall approve only**  
4878 **applications for marijuana cultivation facilities, marijuana manufacturing facilities, marijuana**  
4879 **secure transporters, retail marijuana stores, and marijuana microbusinesses (i) from persons who**  
4880 **are residents of the Commonwealth or (ii) if the applicant is a business entity, from business**  
4881 **entities (a) in which every officer, director, manager, and general partner of the business entity is**  
4882 **a natural person who is a resident of the Commonwealth; (b) in which a majority of the shares,**  
4883 **membership interests, partnership interests, or other equity ownership interests as applicable to**  
4884 **the business entity are held or owned by natural persons who are residents of the Commonwealth**  
4885 **or business entities whose owners are all natural persons who are residents of the Commonwealth;**  
4886 **and (c) that are incorporated in the Commonwealth or otherwise formed or organized under the**  
4887 **laws of the Commonwealth. If the Board determines, after accepting applications for a period of**  
4888 **one year, that additional state licenses are necessary to minimize the illegal market for marijuana**  
4889 **in the Commonwealth, to efficiently meet the demand for marijuana, or to provide reasonable**  
4890 **access to marijuana in rural areas, the Board shall begin to accept applications from any**  
4891 **applicant.**

4892 **4. That the initial adoption of regulations by the Board of Agriculture and Consumer Services**  
4893 **necessary to implement the provisions of this act shall be exempt from the Administrative Process**  
4894 **Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board of Agriculture and**  
4895 **Consumer Services shall provide an opportunity for public comment on the regulations prior to**  
4896 **adoption.**

4897 **5. That the provisions of this act may result in a net increase in periods of imprisonment or**  
4898 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
4899 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
4900 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**  
4901 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**  
4902 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for**  
4903 **periods of commitment to the custody of the Department of Juvenile Justice.**