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HOUSE BILL NO. 972

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 16.1-228, 16.1-260, 16.1-273, 18.2-248.1, 18.2-250.1, 18.2-251, 18.2-251.02, 18.2-251.03, 18.2-252, 18.2-254, 18.2-259.1, 18.2-308.09, 18.2-308.1:5, 19.2-188.1, and 46.2-390.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-250.2 and 19.2-389.3, relating to possession and consumption of marijuana; penalty.*

Patrons—Herring, Guzman, Helmer, Heretick, Kory and Levine

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228, 16.1-260, 16.1-273, 18.2-248.1, 18.2-250.1, 18.2-251, 18.2-251.02, 18.2-251.03, 18.2-252, 18.2-254, 18.2-259.1, 18.2-308.09, 18.2-308.1:5, 19.2-188.1, and 46.2-390.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-250.2 and 19.2-389.3 as follows:

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis;

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services personnel, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person 18 years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

INTRODUCED

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59 "Boot camp" means a short term secure or nonsecure juvenile residential facility with highly
60 structured components including, but not limited to, military style drill and ceremony, physical labor,
61 education and rigid discipline, and no less than six months of intensive aftercare.

62 "Child," "juvenile," or "minor" means a person less than 18 years of age.

63 "Child in need of services" means (i) a child whose behavior, conduct or condition presents or results
64 in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14
65 whose behavior, conduct or condition presents or results in a serious threat to the well-being and
66 physical safety of another person; however, no child who in good faith is under treatment solely by
67 spiritual means through prayer in accordance with the tenets and practices of a recognized church or
68 religious denomination shall for that reason alone be considered to be a child in need of services, nor
69 shall any child who habitually remains away from or habitually deserts or abandons his family as a
70 result of what the court or the local child protective services unit determines to be incidents of physical,
71 emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

72 However, to find that a child falls within these provisions, (i) the conduct complained of must
73 present a clear and substantial danger to the child's life or health or to the life or health of another
74 person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being
75 received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or
76 services needed by the child or his family.

77 "Child in need of supervision" means:

78 1. A child who, while subject to compulsory school attendance, is habitually and without justification
79 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of
80 any and all educational services and programs that are required to be provided by law and which meet
81 the child's particular educational needs, (ii) the school system from which the child is absent or other
82 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
83 and (iii) the school system has provided documentation that it has complied with the provisions of
84 § 22.1-258; or

85 2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or
86 placement authority, remains away from or deserts or abandons his family or lawful custodian on more
87 than one occasion or escapes or remains away without proper authority from a residential care facility in
88 which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to
89 the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not
90 presently being received, and (iii) the intervention of the court is essential to provide the treatment,
91 rehabilitation or services needed by the child or his family.

92 "Child welfare agency" means a child-placing agency, child-caring institution or independent foster
93 home as defined in § 63.2-100.

94 "The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile
95 and domestic relations district court of each county or city.

96 "Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an
97 ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of
98 § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but ~~shall~~ *does* not
99 include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a
100 crime only if committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, ~~the term shall include~~
101 *"delinquent act" includes* a refusal to take a breath test in violation of § 18.2-268.2 or a similar
102 ordinance of any county, city, or town. *For purposes of §§ 16.1-241, 16.1-273, 16.1-278.8,*
103 *16.1-278.8:01, and 16.1-278.9, "delinquent act" includes a violation of § 18.2-250.1.*

104 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed
105 a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been
106 terminated under the provisions of § 16.1-269.6.

107 "Department" means the Department of Juvenile Justice and "Director" means the administrative head
108 in charge thereof or such of his assistants and subordinates as are designated by him to discharge the
109 duties imposed upon him under this law.

110 "Family abuse" means any act involving violence, force, or threat that results in bodily injury or
111 places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by
112 a person against such person's family or household member. Such act includes, but is not limited to, any
113 forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of
114 Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable
115 apprehension of death, sexual assault, or bodily injury.

116 "Family or household member" means (i) the person's spouse, whether or not he or she resides in the
117 same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same
118 home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,
119 half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in
120 the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law,

daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a living arrangement in which such child or person does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

"Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

"Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

"The judge" means the judge or the substitute judge of the juvenile and domestic relations district court of each county or city.

"This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

"Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Qualified individual" means a trained professional or licensed clinician who is not an employee of the local board of social services or licensed child-placing agency that placed the child in a qualified residential treatment program and is not affiliated with any placement setting in which children are placed by such local board of social services or licensed child-placing agency.

"Qualified residential treatment program" means a program that (i) provides 24-hour residential placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that

182 meets the clinical and other needs of children with serious emotional or behavioral disorders, including
183 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this
184 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site
185 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts
186 outreach with the child's family members, including efforts to maintain connections between the child
187 and his siblings and other family; documents and maintains records of such outreach efforts; and
188 maintains contact information for any known biological family and fictive kin of the child; (v) whenever
189 appropriate and in the best interest of the child, facilitates participation by family members in the child's
190 treatment program before and after discharge and documents the manner in which such participation is
191 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months
192 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an
193 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that
194 any child placed in the program receive an assessment within 30 days of such placement by a qualified
195 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
196 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)
197 identifies whether the needs of the child can be met through placement with a family member or in a
198 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified
199 residential treatment program, that would provide the most effective and appropriate level of care for the
200 child in the least restrictive environment and be consistent with the short-term and long-term goals
201 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and
202 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to
203 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,
204 16.1-282.1, or 16.1-282.2.

205 "Residual parental rights and responsibilities" means all rights and responsibilities remaining with the
206 parent after the transfer of legal custody or guardianship of the person, including but not limited to the
207 right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility
208 for support.

209 "Secure facility" or "detention home" means a local, regional or state public or private locked
210 residential facility that has construction fixtures designed to prevent escape and to restrict the movement
211 and activities of children held in lawful custody.

212 "Shelter care" means the temporary care of children in physically unrestricting facilities.

213 "State Board" means the State Board of Juvenile Justice.

214 "Status offender" means a child who commits an act prohibited by law which would not be criminal
215 if committed by an adult.

216 "Status offense" means an act prohibited by law which would not be an offense if committed by an
217 adult.

218 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of
219 § 16.1-269.1 when committed by a juvenile 14 years of age or older.

220 **§ 16.1-260. Intake; petition; investigation.**

221 A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of
222 a petition, except as provided in subsection H and in § 16.1-259. The form and content of the petition
223 shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the
224 Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests,
225 and the processing of petitions to initiate a case shall be the responsibility of the intake officer.
226 However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own
227 motion with the clerk; (ii) designated nonattorney employees of the Department of Social Services may
228 complete, sign, and file petitions and motions relating to the establishment, modification, or enforcement
229 of support on forms approved by the Supreme Court of Virginia with the clerk; (iii) designated
230 nonattorney employees of a local department of social services may complete, sign, and file with the
231 clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions
232 for permanency planning hearings, petitions to establish paternity, motions to establish or modify
233 support, motions to amend or review an order, and motions for a rule to show cause; and (iv) any
234 attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject
235 of the petition is a child alleged to be in need of services, in need of supervision, or delinquent.
236 Complaints alleging abuse or neglect of a child shall be referred initially to the local department of
237 social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.
238 Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake
239 officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is
240 receiving child support services or public assistance. No individual who is receiving support services or
241 public assistance shall be denied the right to file a petition or motion to establish, modify, or enforce an
242 order for support of a child. If the petitioner is seeking or receiving child support services or public
243 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 developing a truancy plan, provided that (a) the juvenile has not previously been proceeded against informally or adjudicated in need of supervision on more than two occasions for failure to comply with compulsory school attendance as provided in § 22.1-254 and (b) the immediately previous informal action or adjudication occurred at least three calendar years prior to the current complaint. The juvenile and his parent or parents, guardian, or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian, or other person standing in loco parentis participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit, and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer shall file the petition.

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

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment, rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a 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 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to

305 be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer
306 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
307 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
308 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a
309 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
310 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
311 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
312 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
313 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to
314 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

315 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
316 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be
317 in need of supervision have utilized or attempted to utilize treatment and services available in the
318 community and have exhausted all appropriate nonjudicial remedies which are available to them. When
319 the intake officer determines that the parties have not attempted to utilize available treatment or services
320 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the
321 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility,
322 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake
323 officer determines that the parties have made a reasonable effort to utilize available community
324 treatment or services may he permit the petition to be filed.

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

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

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

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

345 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299
346 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;

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

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

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

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

353 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
354 7 of Title 18.2;

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

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

357 9. Robbery pursuant to § 18.2-58;

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

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

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

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

362 14. A threat pursuant to § 18.2-60.

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

365 The information provided to a division superintendent pursuant to this section may be disclosed only
366 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~~ 18.2-250.2, 18.2-266, 18.2-266.1, or 29.1-738, or the commission of any other alcohol-related offense, *or a violation of § 18.2-250.1*, provided *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 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 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

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

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

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

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law, or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which (i) shall include a drug screening and (ii) may, and for the purposes of subdivision A 14 or A 17 of § 16.1-278.8 shall, include a social history of the physical, mental, and social conditions, including an assessment of any affiliation with a criminal street gang as defined in § 18.2-46.1, and personality of the child and the facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000, which would be (a) a felony if committed by an adult, ~~or~~ (b) a violation under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2 misdemeanor if committed by an adult, *or* (c) a violation of § 18.2-250.1, the court shall order the juvenile to undergo a drug screening. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice or by a locally operated court services unit or by an individual employed by or currently under contract to such agencies and who is specifically trained to conduct such assessments under the supervision of such counselor.

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

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

428 distribute marijuana.

429 Except as authorized in the Drug Control Act, Chapter 34 of Title 54.1, it shall be unlawful for any
430 person to sell, give, distribute or possess with intent to sell, give or distribute marijuana.

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

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

433 (2) More than one-half ounce but not more than five pounds of marijuana is guilty of a Class 5
434 felony;

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

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

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

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

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

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

458 § 18.2-250.1. Possession of marijuana unlawful.

459 A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance
460 was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in
461 the course of his professional practice, or except as otherwise authorized by the Drug Control Act
462 (§ 54.1-3400 et seq.). *The attorney for the Commonwealth or the county, city, or town attorney may*
463 *prosecute such a case.*

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

467 Any person who violates this section is ~~guilty of a misdemeanor and shall be confined in jail not~~
468 ~~more than 30 days and fined not subject to a civil penalty of (i) no more than \$500; either or both; any~~
469 ~~person; upon a second or subsequent conviction of a violation of this section, is guilty of a Class 1~~
470 ~~misdemeanor \$50 or (ii) no more than \$250 if the person is smoking, consuming, or otherwise ingesting~~
471 ~~marijuana in a public place at the time of the violation. Any civil penalties collected pursuant to this~~
472 ~~section shall be deposited into the Drug Offender Assessment and Treatment Fund established pursuant~~
473 ~~to § 18.2-251.02.~~

474 B. *Any violation of this section may be charged by summons. On a form prescribed by the Office of*
475 *the Executive Secretary of the Supreme Court of Virginia, a summons for a violation of this section may*
476 *be executed by a law-enforcement officer when such violation is observed by such officer. The form*
477 *shall contain the option for the person charged to prepay the civil penalty and all costs. The clerk of*
478 *the court shall certify and forward to the Central Criminal Records Exchange, on a form provided by*
479 *the Exchange, a copy of any order finding a person in violation of this section, as soon as practicable*
480 *but not later than the close of business on the next business day following the day on which the order*
481 *was entered.*

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

486 C. D. In any prosecution under this section involving marijuana in the form of cannabidiol oil or
487 THC-A oil as those terms are defined in § 54.1-3408.3, it shall be an affirmative defense that the
488 individual possessed such oil pursuant to a valid written certification issued by a practitioner in the
489 course of his professional practice pursuant to § 54.1-3408.3 for treatment or to alleviate the symptoms

of (i) the individual's diagnosed condition or disease, (ii) if such individual is the parent or legal guardian of a minor or of an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's diagnosed condition or disease, or (iii) if such individual has been designated as a registered agent pursuant to § 54.1-3408.3, the diagnosed condition or disease of his principal or, if the principal is the parent or legal guardian of a minor or of an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's diagnosed condition or disease. If the individual files the valid written certification with the court at least 10 days prior to trial and causes a copy of such written certification to be delivered to the attorney for the Commonwealth, such written certification shall be prima facie evidence that such oil was possessed pursuant to a valid written certification.

§ 18.2-250.2. Consumption, etc., of marijuana while driving or operating motor vehicles, etc., unlawful; penalty.

It is unlawful for any person to knowingly or intentionally smoke, consume, or otherwise ingest marijuana while driving or operating a motor vehicle, engine, train, watercraft, or motorboat. Any person who violates this section is guilty of a misdemeanor and shall be confined in jail not more than 30 days and fined not more than \$500, either or both; any person, upon a second or subsequent conviction of a violation of this section, is guilty of a Class 1 misdemeanor.

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

Whenever any person who has not previously been convicted of any *criminal* 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 section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or ~~to possession of marijuana under § 18.2-250.1~~ a violation of § 18.2-250.2, 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. If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, 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, by a similar program which 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 ASAP program certified by the 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 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~~ 18.2-250.2, 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~~ 18.2-250.2, 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~~ 18.2-250.2 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.

§ 18.2-251.02. Drug Offender Assessment and Treatment Fund.

There is hereby established in the state treasury the Drug Offender Assessment and Treatment Fund which shall consist of moneys received from (i) fees imposed on certain drug offense convictions pursuant to § 16.1-69.48:3 and subdivisions A 10 and A 11 of § 17.1-275 and § ~~16.1-69.48:3~~ (ii) civil penalties imposed for violations of § 18.2-250.1. All interest derived from the deposit and investment of moneys in the Fund shall be credited to the Fund. Any moneys not appropriated by the General Assembly shall remain in the Drug Offender Assessment and Treatment Fund and shall not be transferred or revert to the general fund at the end of any fiscal year. All moneys in the Fund shall be subject to annual appropriation by the General Assembly to the Department of Corrections, the Department of Juvenile Justice, and the Commission on VASAP to implement and operate the offender substance abuse screening and assessment program; the Department of Criminal Justice Services for the support of community-based probation and local pretrial services agencies; and the Office of the Executive Secretary of the Supreme Court of Virginia for the support of drug treatment court programs.

§ 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, *consumption of marijuana pursuant to § 18.2-250.2*, 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.

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

The trial judge or court trying the case of (i) any person found guilty of ~~violating a criminal violation of~~ any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances; or (ii) *any juvenile penalized for a violation of § 18.2-250.1* shall condition any suspended sentence or suspension of any civil penalty 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 *or suspended civil penalty*, 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 *criminal* 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 *criminal* 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 *criminal* 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.

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

674 A. In addition to any other sanction or penalty imposed for a *criminal* violation of this article *or a*
675 *civil violation of § 18.2-250.1 committed by a juvenile*, the (i) judgment of *either a* conviction under this
676 article *or a civil violation of § 18.2-250.1 by a juvenile* or (ii) placement on probation following deferral
677 of further proceedings under § 18.2-251, except if the proceeding was for ~~possession~~ *consumption* of
678 marijuana pursuant to ~~§ 18.2-250.1~~ 18.2-250.2, or subsection H of § 18.2-258.1 for any such offense
679 shall of itself operate to deprive the person so convicted or placed on probation after deferral of
680 proceedings under § 18.2-251 or subsection H of § 18.2-258.1 of the privilege to drive or operate a
681 motor vehicle, engine, or train in the Commonwealth for a period of six months from the date of such
682 judgment or placement on probation. Such license forfeiture shall be in addition to and shall run
683 consecutively with any other license suspension, revocation or forfeiture in effect or imposed upon the
684 person so convicted or placed on probation. However, a juvenile who has had his license suspended or
685 denied pursuant to § 16.1-278.9 shall not have his license forfeited pursuant to this section for the same
686 offense.

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

691 C. In those cases where the court determines there are compelling circumstances warranting an
692 exception, the court may provide that any individual be issued a restricted license to operate a motor
693 vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued
694 pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in
695 the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender
696 of such person's license in accordance with the provisions of subsection B and shall forward to the
697 Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
698 subsection. This order shall specifically enumerate the restrictions imposed and contain such information
699 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
700 The court shall also provide a copy of its order to such person who may operate a motor vehicle on the
701 order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license,
702 but only if the order provides for a restricted license for that period. A copy of the order and, after
703 receipt thereof, the restricted license shall be carried at all times by such person while operating a motor
704 vehicle. The court may require a person issued a restricted permit under the provisions of this subsection
705 to be monitored by an alcohol safety action program during the period of license suspension. Any
706 violation of the terms of the restricted license or of any condition set forth by the court related thereto,
707 or any failure to remain drug-free during such period shall be reported forthwith to the court by such
708 program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to
709 this section shall be guilty of a violation of § 46.2-301.

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

717 **§ 18.2-308.09. Disqualifications for a concealed handgun permit.**

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

719 1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or
720 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

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

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

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

730 5. An individual who is subject to a restraining order, or to a protective order and prohibited by
731 § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

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

735 6. (Effective January 1, 2021) An individual who is prohibited by § 18.2-308.2 from possessing or

transporting a firearm, except that a restoration order may be obtained in accordance with subsection C of that section.

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

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

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

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

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

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

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

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense that 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, the United States or its territories. For purposes of this disqualifier, only convictions occurring within 16 years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall not apply to an individual with previous adjudications of delinquency who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge.

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

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

19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories, *or who was found in violation of § 18.2-250.1.*

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

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

797 Any person who, within a 36-consecutive-month period, has been convicted of two misdemeanor
798 offenses under subsection B of former § 18.2-248.1; *or* § 18.2-250 ~~or~~, 18.2-250.1, *or* 18.2-250.2 shall
799 be ineligible to purchase or transport a handgun. However, upon expiration of a period of five years
800 from the date of the second conviction and provided the person has not been convicted of any such
801 offense within that period, the ineligibility shall be removed. *For purposes of this section, a civil*
802 *violation of § 18.2-250.1 shall be considered a conviction.*

803 **§ 19.2-188.1. Testimony regarding identification of controlled substances.**

804 A. In any preliminary hearing on a violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title
805 18.2 or a violation of subdivision 6 of § 53.1-203, any law-enforcement officer shall be permitted to
806 testify as to the results of field tests that have been approved by the Department of Forensic Science
807 pursuant to regulations adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.),
808 regarding whether or not any substance the identity of which is at issue in such hearing is a controlled
809 substance, imitation controlled substance, or marijuana, as defined in § 18.2-247.

810 B. In any trial for a violation of § 18.2-250.1 *or* 18.2-250.2, any law-enforcement officer shall be
811 permitted to testify as to the results of any marijuana field test approved as accurate and reliable by the
812 Department of Forensic Science pursuant to regulations adopted in accordance with the Administrative
813 Process Act (§ 2.2-4000 et seq.), regarding whether or not any plant material, the identity of which is at
814 issue, is marijuana provided the defendant has been given written notice of his right to request a full
815 chemical analysis. Such notice shall be on a form approved by the Supreme Court and shall be provided
816 to the defendant prior to trial.

817 In any case in which the person accused of a violation of § 18.2-250.1 *or* 18.2-250.2, or the
818 attorney of record for the accused, desires a full chemical analysis of the alleged plant material, he may,
819 by motion prior to trial before the court in which the charge is pending, request such a chemical
820 analysis. Upon such motion, the court shall order that the analysis be performed by the Department of
821 Forensic Science and shall prescribe in its order the method of custody, transfer, and return of evidence
822 submitted for chemical analysis.

823 **§ 19.2-389.3. Marijuana possession; limits on dissemination of criminal history record information;**
824 ***prohibited practices by employers, educational institutions, and state and local governments.***

825 A. *Records relating to the arrest, criminal charge, or conviction of a person for a violation of §*
826 *18.2-250.1, including any violation charged under § 18.2-250.1 that was deferred and dismissed*
827 *pursuant to § 18.2-251, maintained by the Central Criminal Records Exchange shall not be open for*
828 *public inspection or otherwise disclosed, provided that such records may be disseminated (i) to make the*
829 *determination as provided in § 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in*
830 *the preparation of a pretrial investigation report prepared by a local pretrial services agency*
831 *established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9, a presentence or post-sentence*
832 *investigation report pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary*
833 *sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local*
834 *community-based probation services agencies established pursuant to the Comprehensive Community*
835 *Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult*
836 *local-responsible offenders and all court services units serving juvenile delinquent offenders; (iv) for*
837 *fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information*
838 *System computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing*
839 *and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing*
840 *guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time*
841 *employee of the State Police, a police department or sheriff's office that is a part of or administered by*
842 *the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and*
843 *detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth, for*
844 *purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Virginia Criminal*
845 *Sentencing Commission for research purposes; (viii) to any full-time or part-time employee of the State*
846 *Police or a police department or sheriff's office that is a part of or administered by the Commonwealth*
847 *or any political subdivision thereof for the purpose of screening any person for full-time or part-time*
848 *employment with the State Police or a police department or sheriff's office that is a part of or*
849 *administered by the Commonwealth or any political subdivision thereof; (ix) to the State Health*
850 *Commissioner or his designee for the purpose of screening any person who applies to be a volunteer*
851 *with or an employee of an emergency medical services agency as provided in § 32.1-111.5; and (x) to*
852 *the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a*
853 *public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1*
854 *and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an*
855 *employee of an emergency medical services agency as provided in § 32.1-111.5.*

856 B. An employer or educational institution shall not, in any application, interview, or otherwise,
857 require an applicant for employment or admission to disclose information concerning any arrest,
858 criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or

conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A.

C. Agencies, officials, and employees of the state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.

D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor for each violation.

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

A. Except as otherwise ordered pursuant to § 18.2-259.1, the Commissioner shall forthwith revoke, and not thereafter reissue for six months from the later of (i) the date of conviction, *date of judgment for a violation of § 18.2-250.1 by a juvenile*, or date of deferral of proceedings under § 18.2-251, unless the deferral was for proceedings for ~~possession~~ consumption of marijuana pursuant to § ~~18.2-250.1~~ 18.2-250.2, or (ii) the next date of eligibility to be licensed, the driver's license, registration card, and license plates of any resident or nonresident on receiving notification of (a) his conviction *or judgment for a violation of § 18.2-250.1 by a juvenile*, (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~~ consumption of marijuana pursuant to § ~~18.2-250.1~~ 18.2-250.2, 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.

2. That the Secretaries of Agriculture and Forestry, Finance, Health and Human Resources, and Public Safety and Homeland Security shall convene a work group to study the impact on the Commonwealth of legalizing the sale and personal use of marijuana. In conducting its study, the work group shall review the legal and regulatory frameworks that have been established in states that have legalized the sale and personal use of marijuana and shall examine the feasibility of legalizing the sale and personal use of marijuana, the potential revenue impact of legalization on the Commonwealth, the legal and regulatory framework necessary to successfully implement legalization in the Commonwealth, and the health effects of marijuana use. The work group shall complete its work and report its recommendations to the General Assembly and the Governor by November 1, 2021.