

20200931D

## HOUSE BILL NO. 5141

Offered August 26, 2020

A BILL to amend and reenact §§ 3.2-4113, 15.2-1627, 16.1-228, as it is currently effective and as it shall become effective, 16.1-260, 16.1-273, 16.1-278.9, 18.2-248.1, 18.2-250, 18.2-251.02, 18.2-251.03, 18.2-251.1 through 18.2-251.1:3, 18.2-265.1, 18.2-265.2, 18.2-265.3, 18.2-308.1:5, 19.2-188.1, 19.2-389.3, 19.2-392.2, 19.2-392.4, and 54.1-3442.8 of the Code of Virginia and to repeal § 18.2-250.1 of the Code of Virginia, relating to possession of marijuana.

Patrons—Carroll Foy and Hudson

Referred to Committee for Courts of Justice

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

1. That §§ 3.2-4113, 15.2-1627, 16.1-228, as it is currently effective and as it shall become effective, 16.1-260, 16.1-273, 16.1-278.9, 18.2-248.1, 18.2-250, 18.2-251.02, 18.2-251.03, 18.2-251.1 through 18.2-251.1:3, 18.2-265.1, 18.2-265.2, 18.2-265.3, 18.2-308.1:5, 19.2-188.1, 19.2-389.3, 19.2-392.2, 19.2-392.4, and 54.1-3442.8 of the Code of Virginia are amended and reenacted as follows:

**§ 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, or 18.2-250, ~~or 18.2-250.1~~ 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, or 18.2-250, ~~or 18.2-250.1~~ 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.

**§ 15.2-1627. Duties of attorneys for the Commonwealth and their assistants.**

A. No attorney for the Commonwealth, or assistant attorney for the Commonwealth, shall be required to carry out any duties as a part of his office in civil matters of advising the governing body and all boards, departments, agencies, officials and employees of his county or city; of drafting or preparing county or city ordinances; of defending or bringing actions in which the county or city, or any of its boards, departments or agencies, or officials and employees thereof, shall be a party; or in any other manner of advising or representing the county or city, its boards, departments, agencies, officials and employees, except in matters involving the enforcement of the criminal law within the county or city.

B. The attorney for the Commonwealth and assistant attorney for the Commonwealth shall be a part of the department of law enforcement of the county or city in which he is elected or appointed, and shall have the duties and powers imposed upon him by general law, including the duty of prosecuting all warrants, indictments or informations charging a felony, and he may in his discretion, prosecute Class 1, 2 and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of confinement in jail, or a fine of \$500 or more, or both such confinement and fine. He shall enforce all forfeitures, and carry out all duties imposed upon him by § 2.2-3126. He may enforce the provisions of ~~§ 18.2-250.1, 18.2-268.3, 29.1-738.2, or 46.2-341.26:3.~~

**§ 16.1-228. (Effective until January 1, 2021) 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;

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

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

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

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

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

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

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

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

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

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

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

93 "Child," "juvenile," or "minor" means a person who is (i) younger than 18 years of age or (ii) for  
94 purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of  
95 Title 63.2, less than 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

96 "Child in need of services" means (i) a child whose behavior, conduct or condition presents or results  
97 in a serious threat to the well-being and physical safety of the child, *including a child who possesses or*  
98 *uses marijuana before 18 years of age*, or (ii) a child under ~~the age of~~ 14 years of age whose behavior,  
99 conduct or condition presents or results in a serious threat to the well-being and physical safety of  
100 another person; however, no child who in good faith is under treatment solely by spiritual means  
101 through prayer in accordance with the tenets and practices of a recognized church or religious  
102 denomination shall for that reason alone be considered to be a child in need of services, nor shall any  
103 child who habitually remains away from or habitually deserts or abandons his family as a result of what  
104 the court or the local child protective services unit determines to be incidents of physical, emotional or  
105 sexual abuse in the home be considered a child in need of services for that reason alone.

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

111 "Child in need of supervision" means:

112 1. A child who, while subject to compulsory school attendance, is habitually and without justification  
113 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of  
114 any and all educational services and programs that are required to be provided by law and which meet  
115 the child's particular educational needs, (ii) the school system from which the child is absent or other  
116 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,  
117 and (iii) the school system has provided documentation that it has complied with the provisions of  
118 § 22.1-258; or

119 2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or  
120 placement authority, remains away from or deserts or abandons his family or lawful custodian on more

than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

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

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

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

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

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

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

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

182 commitment to the Department of Juvenile Justice, was in the custody of a local board of social  
183 services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was  
184 committed to the Department of Juvenile Justice immediately prior to placement in an independent  
185 living arrangement. "Independent living services" includes counseling, education, housing, employment,  
186 and money management skills development and access to essential documents and other appropriate  
187 services to help children or persons prepare for self-sufficiency.

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

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

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

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

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

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

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

214 "Qualified residential treatment program" means a program that (i) provides 24-hour residential  
215 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that  
216 meets the clinical and other needs of children with serious emotional or behavioral disorders, including  
217 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this  
218 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site  
219 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts  
220 outreach with the child's family members, including efforts to maintain connections between the child  
221 and his siblings and other family; documents and maintains records of such outreach efforts; and  
222 maintains contact information for any known biological family and fictive kin of the child; (v) whenever  
223 appropriate and in the best interest of the child, facilitates participation by family members in the child's  
224 treatment program before and after discharge and documents the manner in which such participation is  
225 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months  
226 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an  
227 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that  
228 any child placed in the program receive an assessment within 30 days of such placement by a qualified  
229 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,  
230 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)  
231 identifies whether the needs of the child can be met through placement with a family member or in a  
232 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified  
233 residential treatment program, that would provide the most effective and appropriate level of care for the  
234 child in the least restrictive environment and be consistent with the short-term and long-term goals  
235 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and  
236 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to  
237 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,  
238 16.1-282.1, or 16.1-282.2.

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

243 "Secure facility" or "detention home" means a local, regional or state public or private locked

residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

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

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

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

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

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

**§ 16.1-228. (Effective January 1, 2021) Definitions.**

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

"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 Tier III 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 federal Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the federal 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 that constitutes a part of a common scheme or plan with, a delinquent act that would be a felony if committed by an adult.

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

"Child," "juvenile," or "minor" means a person who is (i) younger than 18 years of age or (ii) for purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of Title 63.2, less than 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child, *including a child who possesses or uses marijuana before 18 years of age*, or (ii) a child under ~~the age of~~ 14 years of age whose behavior,

conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; 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 a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

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

"Child in need of supervision" means:

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

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

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

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

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

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

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

"Driver's license" means any document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2, or the comparable law of another jurisdiction, authorizing the operation of a motor vehicle upon the highways.

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

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in 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. "Independent living services" includes 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 meets the clinical and other needs of children with serious emotional or behavioral disorders, including any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site

428 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts  
429 outreach with the child's family members, including efforts to maintain connections between the child  
430 and his siblings and other family; documents and maintains records of such outreach efforts; and  
431 maintains contact information for any known biological family and fictive kin of the child; (v) whenever  
432 appropriate and in the best interest of the child, facilitates participation by family members in the child's  
433 treatment program before and after discharge and documents the manner in which such participation is  
434 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months  
435 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an  
436 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that  
437 any child placed in the program receive an assessment within 30 days of such placement by a qualified  
438 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,  
439 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)  
440 identifies whether the needs of the child can be met through placement with a family member or in a  
441 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified  
442 residential treatment program, that would provide the most effective and appropriate level of care for the  
443 child in the least restrictive environment and be consistent with the short-term and long-term goals  
444 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and  
445 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to  
446 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,  
447 16.1-282.1, or 16.1-282.2.

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

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

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

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

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

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

461 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of  
462 § 16.1-269.1 when committed by a juvenile 14 years of age or older.

463 **§ 16.1-260. Intake; petition; investigation.**

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

488 B. The appearance of a child before an intake officer may be by (i) personal appearance before the  
489 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 (a) is not alleged to have committed a violent juvenile felony or (b) 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 petition and proceed informally by developing a truancy plan, provided that (1) 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 (2) 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 deferral 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 (A) 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, (B) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (C) 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 may 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 be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other

than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written explanation of the conditions, procedures and time limits applicable to the issuance of protective orders pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

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

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

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

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

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

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2;

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

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

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

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

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

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

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

9. Robbery pursuant to § 18.2-58;

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

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

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

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

14. A threat pursuant to § 18.2-60.

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

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

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

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws, or a violation of the ordinance of any city regulating

surfing or any ordinance establishing curfew violations, animal control violations, or littering violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

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

3. In the case of a misdemeanor violation of § 18.2-266, 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 § 4.1-305 ~~or 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 § 4.1-305 ~~or 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 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.

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

A. If a court has found facts which would justify a finding that a child at least 13 years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar

ordinance of any county, city or town, (ii) a refusal to take a breath test in violation of § 18.2-268.2, (iii) a felony violation of § 18.2-248, 18.2-248.1 or 18.2-250, (iv) a misdemeanor violation of § 18.2-248, 18.2-248.1, or 18.2-250 or a violation of § 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.

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

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

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

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

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person to sell, give, distribute or possess with intent to sell, give, or distribute marijuana.

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

- (1) Not more than one ounce of marijuana is guilty of a Class 1 misdemeanor;
- (2) More than one ounce but not more than five pounds of marijuana is guilty of a Class 5 felony;
- (3) More than five pounds of marijuana is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years.

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

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

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

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

(d) When a person is convicted of a third or subsequent felony offense under this section and it is alleged in the warrant, indictment or information that he has been before convicted of two or more felony offenses under this section or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth, and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to

797 imprisonment for life or for any period not less than five years, five years of which shall be a  
798 mandatory minimum term of imprisonment to be served consecutively with any other sentence and he  
799 shall be fined not more than \$500,000.

800 *No law-enforcement officer, as defined in § 9.1-101, may lawfully search or seize any person, place,*  
801 *or thing solely on the basis of the odor of marijuana, and no evidence discovered or obtained as a*  
802 *result of such unlawful search or seizure shall be admissible in any trial, hearing, or other proceeding.*

803 **§ 18.2-250. Possession of controlled substances unlawful.**

804 A. It is unlawful for any person knowingly or intentionally to possess a controlled substance *other*  
805 *than marijuana* unless the substance was obtained directly from, or pursuant to, a valid prescription or  
806 order of a practitioner while acting in the course of his professional practice, or except as otherwise  
807 authorized by the Drug Control Act (§ 54.1-3400 et seq.).

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

811 (a) Any person who violates this section with respect to any controlled substance *other than*  
812 *marijuana* classified in Schedule I or II of the Drug Control Act ~~shall be~~ *is* guilty of a Class 5 felony,  
813 except that any person other than an inmate of a penal institution as defined in § 53.1-1 or in the  
814 custody of an employee thereof who violates this section with respect to a cannabimimetic agent is  
815 guilty of a Class 1 misdemeanor.

816 (b) Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of  
817 an employee thereof, who violates this section with respect to a controlled substance classified in  
818 Schedule III ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

819 (b1) Violation of this section with respect to a controlled substance classified in Schedule IV ~~shall be~~  
820 *is* punishable as a Class 2 misdemeanor.

821 (b2) Violation of this section with respect to a controlled substance classified in Schedule V ~~shall be~~  
822 *is* punishable as a Class 3 misdemeanor.

823 (c) Violation of this section with respect to a controlled substance classified in Schedule VI ~~shall be~~  
824 *is* punishable as a Class 4 misdemeanor.

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

829 **§ 18.2-251.02. Drug Offender Assessment and Treatment Fund.**

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

842 **§ 18.2-251.03. Arrest and prosecution when experiencing or reporting overdoses.**

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

845 B. No individual shall be subject to arrest or prosecution for the unlawful purchase, possession, or  
846 consumption of alcohol pursuant to § 4.1-305, possession of a controlled substance pursuant to  
847 § 18.2-250; ~~possession of marijuana pursuant to § 18.2-250.1,~~ intoxication in public pursuant to  
848 § 18.2-388, or possession of controlled paraphernalia pursuant to § 54.1-3466 if:

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

855 2. Such individual remains at the scene of the overdose or at any alternative location to which he or  
856 the person requiring emergency medical attention has been transported until a law-enforcement officer  
857 responds to the report of an overdose. If no law-enforcement officer is present at the scene of the  
858 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. The provisions of this section shall not apply to any person who seeks or obtains emergency medical attention for himself or another individual, or to a person experiencing an overdose when another individual seeks or obtains emergency medical attention for him, 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 protection from arrest or prosecution for any individual or offense other than those listed in subsection B.

E. No law-enforcement officer acting in good faith shall be found liable for false arrest if it is later determined that the person arrested was immune from prosecution under this section.

**§ 18.2-251.1. Possession or distribution of marijuana for medical purposes permitted.**

A. No person shall be prosecuted under § 18.2-250 or § 18.2-250.1 for the possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid prescription issued by a medical doctor in the course of his professional practice for treatment of cancer or glaucoma.

B. No medical doctor shall be prosecuted under § 18.2-248 or § 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of his professional practice for treatment of cancer or glaucoma.

C. No pharmacist shall be prosecuted under §§ 18.2-248 to 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol to any person who holds a valid prescription of a medical doctor for such substance issued in the course of such doctor's professional practice for treatment of cancer or glaucoma.

**§ 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 § 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.

**§ 18.2-251.1:2. Possession or distribution of cannabis oil; nursing homes and certified nursing facilities; hospice and hospice facilities; assisted living facilities.**

No person employed by a nursing home, hospice, hospice facility, or assisted living facility and authorized to possess, distribute, or administer medications to patients or residents shall be prosecuted under § 18.2-248, 18.2-248.1, or 18.2-250, or 18.2-250.1 for the possession or distribution of cannabis oil for the purposes of storing, dispensing, or administering cannabis oil to a patient or resident who has been issued a valid written certification for the use of cannabis oil in accordance with subsection B of § 54.1-3408.3 and has registered with the Board of Pharmacy.

**§ 18.2-251.1:3. Possession or distribution of cannabidiol oil, THC-A oil, or industrial hemp; laboratories.**

No person employed by an analytical laboratory to retrieve, deliver, or possess cannabidiol oil, THC-A oil, or industrial hemp samples from a permitted pharmaceutical processor, a licensed industrial hemp grower, or a licensed industrial hemp processor for the purpose of performing required testing shall be prosecuted under § 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, THC-A oil, or industrial hemp, or for storing cannabidiol oil, THC-A oil, or industrial hemp for testing purposes in accordance with regulations promulgated by the Board of Pharmacy and the Board of Agriculture and Consumer Services.

**§ 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 "Drug paraphernalia" 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;

920 2. Kits intended for use or designed for use in manufacturing, compounding, converting, producing,  
921 processing, or preparing ~~marijuana~~ or controlled substances;  
922 3. Isomerization devices intended for use or designed for use in increasing the potency of ~~marijuana~~  
923 or any species of plant ~~which~~ *that* is a controlled substance;  
924 4. Testing equipment intended for use or designed for use in identifying or in analyzing the strength  
925 or effectiveness of ~~marijuana~~ or controlled substances, other than narcotic testing products used to  
926 determine whether a controlled substance contains fentanyl or a fentanyl analog;  
927 5. Scales and balances intended for use or designed for use in weighing or measuring ~~marijuana~~ or  
928 controlled substances;  
929 6. Diluents and adulterants, such as quinine hydrochloride, mannitol, or mannite, intended for use or  
930 designed for use in cutting controlled substances;  
931 7. ~~Separation gins and sifters intended for use or designed for use in removing twigs and seeds from,~~  
932 ~~or in otherwise cleaning or refining, marijuana;~~  
933 8. Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in  
934 compounding controlled substances;  
935 9. 8. Capsules, balloons, envelopes, and other containers intended for use or designed for use in  
936 packaging small quantities of ~~marijuana~~ or controlled substances;  
937 10. 9. Containers and other objects intended for use or designed for use in storing or concealing  
938 ~~marijuana~~ or controlled substances;  
939 11. 10. Hypodermic syringes, needles, and other objects intended for use or designed for use in  
940 parenterally injecting controlled substances into the human body; *and*  
941 12. 11. Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing  
942 ~~marijuana, cocaine, hashish, or hashish oil~~ into the human body, such as:  
943 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent  
944 screens, ~~hashish~~ heads, or punctured metal bowls;  
945 b. Water pipes;  
946 c. Carburetion tubes and devices;  
947 d. Smoking and carburetion masks;  
948 e. ~~Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has~~  
949 ~~become too small or too short to be held in the hand;~~  
950 f. Miniature cocaine spoons, and cocaine vials;  
951 ~~g. f. Chamber pipes;~~  
952 ~~h. g. Carburetor pipes;~~  
953 ~~i. h. Electric pipes;~~  
954 ~~j. i. Air-driven pipes;~~  
955 ~~k. j. Chillums;~~  
956 ~~l. k. Bongs;~~  
957 ~~m. l. Ice pipes or chillers.~~  
958 **§ 18.2-265.2. Evidence to be considered in cases under this article.**  
959 In determining whether an object is drug paraphernalia, the court may consider, in addition to all  
960 other relevant evidence, the following:  
961 1. Constitutionally admissible statements by the accused concerning the use of the object;  
962 2. The proximity of the object to ~~marijuana~~ or controlled substances, which proximity is actually  
963 known to the accused;  
964 3. Instructions, oral or written, provided with the object concerning its use;  
965 4. Descriptive materials accompanying the object ~~which~~ *that* explain or depict its use;  
966 5. National and local advertising within the actual knowledge of the accused concerning its use;  
967 6. The manner in which the object is displayed for sale;  
968 7. Whether the accused is a legitimate supplier of like or related items to the community, such as a  
969 licensed distributor or dealer of tobacco products;  
970 8. Evidence of the ratio of sales of the objects defined in § 18.2-265.1 to the total sales of the  
971 business enterprise;  
972 9. The existence and scope of legitimate uses for the object in the community;  
973 10. Expert testimony concerning its use or the purpose for which it was designed;  
974 11. Relevant evidence of the intent of the accused to deliver it to persons who he knows, or should  
975 reasonably know, intend to use the object with an illegal drug. The innocence of an owner, or of anyone  
976 in control of the object, as to a direct violation of this article shall not prevent a finding that the object  
977 is intended for use or designed for use as drug paraphernalia.  
978 **§ 18.2-265.3. Penalties for sale, etc., of drug paraphernalia.**  
979 A. Any person who sells or possesses with intent to sell drug paraphernalia, knowing, or under  
980 circumstances where one reasonably should know, that it is either designed for use or intended by such  
981 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.

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

Any person who, within a 36-consecutive-month period, has been convicted of two misdemeanor offenses under subsection B of former § 18.2-248.1:1, § 18.2-250, or *former* § 18.2-250.1 shall be ineligible to purchase or transport a handgun. However, upon expiration of a period of five years from the date of the second conviction and provided the person has not been convicted of any such offense within that period, the ineligibility shall be removed.

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

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

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

In any case in which the person accused of a violation of ~~§ 18.2-250.1~~, or the attorney of record for the accused, desires a full chemical analysis of the alleged plant material, he may, by motion prior to trial before the court in which the charge is pending, request such a chemical analysis. Upon such motion, the court shall order that the analysis be performed by the Department of Forensic Science in accordance with the provisions of ~~§ 18.2-247~~ and shall prescribe in its order the method of custody, transfer, and return of evidence submitted for chemical analysis.

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

A. Records relating to the arrest, criminal charge, or conviction of a person for a violation of *former* § 18.2-250.1, including any violation charged under *former* § 18.2-250.1 that was deferred and dismissed pursuant to § 18.2-251, maintained in the Central Criminal Records Exchange shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated, *unless such records have been expunged pursuant to § 19.2-392.2*, (i) to make the determination as provided in § 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9, a pre-sentence or post-sentence investigation report pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation services agencies established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) 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 purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Virginia Criminal Sentencing Commission for research purposes; (viii) to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any

political subdivision thereof for the purpose of screening any person for full-time or part-time employment with the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (ix) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; (x) to any full-time or part-time employee of the Department of Forensic Science for the purpose of screening any person for full-time or part-time employment with the Department of Forensic Science; (xi) to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; and (xii) to any full-time or part-time employee of the Department of Motor Vehicles, any employer as defined in § 46.2-341.4, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration.

B. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission 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.

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.

#### § 19.2-392.2. Expungement of police and court records.

A. If a person is charged with the commission of a crime, a civil offense, or any offense defined in Title 18.2, and

~~1. Is (i) is acquitted; or~~

~~2. A; (ii) a nolle prosequi is taken or; (iii) the charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § 19.2-151; or (iv) the person was convicted of or adjudicated delinquent for a violation of former § 18.2-250.1 for an offense that occurred prior to January 1, 2021, or such charge was deferred and dismissed, and all court costs and fines and all orders of restitution have been satisfied, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge, adjudication, or conviction.~~

B. If any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification, he may file a petition with the court disposing of the charge for relief pursuant to this section. Such person shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed under this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall be filed in the circuit court of the county or city in which the case was disposed of ~~by acquittal or being otherwise dismissed~~ and shall contain, except where not reasonably available, the date of arrest and the name of the arresting agency. Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific criminal charge ~~or~~, civil offense, *adjudication, or conviction* to be expunged, the date of final disposition of the charge, *adjudication, or conviction* as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition or may give written notice to the court that he does not object to the petition within 21 days after it is served on him.

E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's

fingerprints and shall provide that agency with a copy of the petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to expunge, if applicable, and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon the entry of an order of expungement or an order denying the petition for expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

F. After receiving the criminal history record information from the CCRE, the court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest, *charge, adjudication, or conviction* of the petitioner causes or may cause circumstances ~~which~~ *that* constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records, including electronic records, relating to the *arrest, charge, adjudication, or conviction*. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the arrest, *charge, adjudication, or conviction* was for a misdemeanor violation or the charge was for a civil offense, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records relating to the *arrest, charge, adjudication, or conviction* and the court shall enter an order of expungement. If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object to the petition and (ii) when the charge to be expunged is a felony, stipulates in such written notice that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances ~~which~~ *that* constitute a manifest injustice to the petitioner, the court may enter an order of expungement without conducting a hearing.

G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

H. Notwithstanding any other provision of this section, when ~~the~~ *a* charge is dismissed because the court finds that the person arrested or charged is not the person named in the summons, warrant, indictment, or presentment, the court dismissing the charge shall, upon motion of the person improperly arrested or charged, enter an order requiring expungement of the police and court records relating to the charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to this subsection and shall be accompanied by the complete set of the petitioner's fingerprints filed with his petition. Upon the entry of such order, it shall be treated as provided in subsection K.

I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-402 of an absolute pardon for the commission of a crime that a person did not commit, the court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon the entry of such order, it shall be treated as provided in subsection K.

J. Upon receiving a copy of a writ vacating a conviction pursuant to § 19.2-327.5 or 19.2-327.13, the court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon the entry of the order, it shall be treated as provided in subsection K.

K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of such records shall be effected.

L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth. If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such costs paid by the petitioner.

M. Any order entered where (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order of expungement contrary to law, shall be voidable upon motion and notice made within three years of the entry of such order.

#### **§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments.**

A. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest or criminal charge against him, *adjudication, or conviction* that has been expunged. An applicant need not, in answer to any question concerning any arrest ~~or~~, criminal charge that has not resulted in a conviction,

1166 *adjudication, or conviction*, include a reference to or information concerning arrests ~~or~~, charges,  
1167 *adjudications, or convictions* that have been expunged.

1168 B. Agencies, officials, and employees of the state and local governments shall not, in any  
1169 application, interview, or otherwise, require an applicant for a license, permit, registration, or  
1170 governmental service to disclose information concerning any arrest ~~or~~, criminal charge against him,  
1171 *adjudication, or conviction* that has been expunged. An applicant need not, in answer to any question  
1172 concerning any arrest ~~or~~, criminal charge that has not resulted in a conviction, *adjudication, or*  
1173 *conviction* include a reference to or information concerning *arrests*, charges, *adjudications, or*  
1174 *convictions* that have been expunged. Such an application may not be denied solely because of the  
1175 applicant's refusal to disclose information concerning any arrest ~~or~~, criminal charge against him,  
1176 *adjudication, or conviction* that has been expunged.

1177 C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation.

1178 **§ 54.1-3442.8. Criminal liability; exceptions.**

1179 No agent or employee of a pharmaceutical processor or cannabis dispensing facility shall be  
1180 prosecuted under § 18.2-248, 18.2-248.1, *or* 18.2-250; ~~or 18.2-250.1~~ for possession or manufacture of  
1181 marijuana or for possession, manufacture, or distribution of cannabis oil, subject to any civil penalty,  
1182 denied any right or privilege, or subject to any disciplinary action by a professional licensing board if  
1183 such agent or employee (i) possessed or manufactured such marijuana for the purposes of producing  
1184 cannabis oil in accordance with the provisions of this article and Board regulations or (ii) possessed,  
1185 manufactured, or distributed such cannabis oil in accordance with the provisions of this article and  
1186 Board regulations.

1187 **2. That § 18.2-250.1 of the Code of Virginia is repealed.**