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## SENATE BILL NO. 1243

Offered January 13, 2021

Prefiled January 11, 2021

*A BILL to amend and reenact §§ 2.2-3705.3, 2.2-3711, 3.2-4113, 4.1-225, 15.2-1627, 16.1-69.48:1, as it is currently effective and as it shall become effective, 16.1-69.48:3, 16.1-228, as it is currently effective and as it shall become effective, 16.1-260, 16.1-273, 16.1-278.8:01, 16.1-278.9, 16.1-309.1, 17.1-275, 17.1-275.8, 17.1-805, 18.2-46.1, 18.2-247, 18.2-248, 18.2-248.01, 18.2-251, 18.2-251.02, 18.2-251.03, 18.2-252, 18.2-254, 18.2-255, 18.2-255.1, 18.2-255.2, 18.2-258 through 18.2-258.1, 18.2-265.1, 18.2-265.2, 18.2-265.3, 18.2-287.2, 18.2-308.09, 18.2-308.1:5, 18.2-308.4, 18.2-460, 18.2-474.1, 18.2-513, 19.2-11.2, 19.2-66, 19.2-81.1, 19.2-83.1, 19.2-120, 19.2-120.1, 19.2-188.1, 19.2-215.1, 19.2-291.1, 19.2-299, 19.2-299.2, 19.2-303.01, 19.2-386.22 through 19.2-386.25, 19.2-386.28, 19.2-389, as it is currently effective and as it shall become effective, 19.2-392.02, as it is currently effective and as it shall become effective, 19.2-392.2, 22.1-277.08, 22.1-315, 24.2-233, 37.2-314, 37.2-416, 37.2-506, 48-17, 52-8.1:1, 52-35, 53.1-220.1, 53.1-231.2, 54.1-2903, 54.1-3408.3, 54.1-3442.6, and 54.1-3442.8 of the Code of Virginia; to amend the Code of Virginia by adding in Title 3.2 a chapter numbered 41.2, containing articles numbered 1 through 7, consisting of sections numbered 3.2-4122 through 3.2-4199.6, and by adding a section numbered 19.2-392.2:1; and to repeal §§ 18.2-248.1, 18.2-250.1, 18.2-251.1 through 18.2-251.1:3, and 19.2-389.3 of the Code of Virginia, relating to the cultivation, manufacture, sale, possession, and testing of marijuana; penalties.*

Patron—Morrissey

Referred to Committee on Rehabilitation and Social Services

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

**1. That §§ 2.2-3705.3, 2.2-3711, 3.2-4113, 4.1-225, 15.2-1627, 16.1-69.48:1, as it is currently effective and as it shall become effective, 16.1-69.48:3, 16.1-228, as it is currently effective and as it shall become effective, 16.1-260, 16.1-273, 16.1-278.8:01, 16.1-278.9, 16.1-309.1, 17.1-275, 17.1-275.8, 17.1-805, 18.2-46.1, 18.2-247, 18.2-248, 18.2-248.01, 18.2-251, 18.2-251.02, 18.2-251.03, 18.2-252, 18.2-254, 18.2-255, 18.2-255.1, 18.2-255.2, 18.2-258 through 18.2-258.1, 18.2-265.1, 18.2-265.2, 18.2-265.3, 18.2-287.2, 18.2-308.09, 18.2-308.1:5, 18.2-308.4, 18.2-460, 18.2-474.1, 18.2-513, 19.2-11.2, 19.2-66, 19.2-81.1, 19.2-83.1, 19.2-120, 19.2-120.1, 19.2-188.1, 19.2-215.1, 19.2-291.1, 19.2-299, 19.2-299.2, 19.2-303.01, 19.2-386.22 through 19.2-386.25, 19.2-386.28, 19.2-389, as it is currently effective and as it shall become effective, 19.2-392.02, as it is currently effective and as it shall become effective, 19.2-392.2, 22.1-277.08, 22.1-315, 24.2-233, 37.2-314, 37.2-416, 37.2-506, 48-17, 52-8.1:1, 52-35, 53.1-220.1, 53.1-231.2, 54.1-2903, 54.1-3408.3, 54.1-3442.6, and 54.1-3442.8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 3.2 a chapter numbered 41.2, containing articles numbered 1 through 7, consisting of sections numbered 3.2-4122 through 3.2-4199.6, and by adding a section numbered 19.2-392.2:1 as follows:**

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

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

1. Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to *Chapter 41.2* (§ 3.2-4122 *et seq.*) of Title 3.2 or Article 1.1:1 (§ 18.2-340.15 *et seq.*) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

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

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution

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SB1243

59 of higher education. However, nothing in this subdivision shall prevent the disclosure of information  
60 taken from inactive reports in a form that does not reveal the identity of charging parties, persons  
61 supplying the information, or other individuals involved in the investigation.

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

64 5. Investigative notes and other correspondence and information furnished in confidence with respect  
65 to an investigation or conciliation process involving an alleged unlawful discriminatory practice under  
66 the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance  
67 with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1,  
68 1987, in accordance with applicable law, relating to local human rights or human relations commissions.  
69 However, nothing in this subdivision shall prevent the distribution of information taken from inactive  
70 reports in a form that does not reveal the identity of the parties involved or other persons supplying  
71 information.

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

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

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

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

104 10. Information furnished to or prepared by the Board of Education pursuant to subsection D of  
105 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,  
106 unauthorized alteration, or improper administration of tests by local school board employees responsible  
107 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure  
108 of such information to (i) a local school board or division superintendent for the purpose of permitting  
109 such board or superintendent to consider or to take personnel action with regard to an employee or (ii)  
110 any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the  
111 identity of any person making a complaint or supplying information to the Board on a confidential basis  
112 and (b) does not compromise the security of any test mandated by the Board.

113 11. Information contained in (i) an application for licensure or renewal of a license for teachers and  
114 other school personnel, including transcripts or other documents submitted in support of an application,  
115 and (ii) an active investigation conducted by or for the Board of Education related to the denial,  
116 suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses  
117 including investigator notes and other correspondence and information, furnished in confidence with  
118 respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a)  
119 application information to the applicant at his own expense or (b) investigation information to a local  
120 school board or division superintendent for the purpose of permitting such board or superintendent to

consider or to take personnel action with regard to an employee. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The completed investigation information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information regarding a current or former student shall be released except as permitted by state or federal law.

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

13. Records of active investigations being conducted by the Department of Behavioral Health and Developmental Services pursuant to Chapter 4 (§ 37.2-400 et seq.) of Title 37.2.

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

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

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

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

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

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

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

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

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

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

9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or

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

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

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

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

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

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

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

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

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

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

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

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or

the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, and those portions of meetings in which individual death cases of persons with developmental disabilities are discussed by the Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

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

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

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

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

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

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

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

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

309 30. Discussion or consideration of grant or loan application information subject to the exclusion in  
310 subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

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

314 32. Discussion or consideration of confidential proprietary information and trade secrets developed  
315 and held by a local public body providing certain telecommunication services or cable television services  
316 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this  
317 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et  
318 seq.).

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

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

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

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

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

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

341 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of  
342 § 2.2-3705.6 related to economic development.

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

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

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

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

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

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

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

47. Discussion or consideration of grant, loan, or investment application records subject to the exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-2351 et seq.) of Chapter 22.

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

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

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

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

52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority, of information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

53. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to § 58.1-4105 regarding the denial or revocation of a license of a casino gaming operator and discussion, consideration, or review of matters related to investigations exempt from disclosure under subdivision 1 of § 2.2-3705.3.

54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007 regarding the denial of, revocation of, suspension of, or refusal to renew a permit related to sports betting and any discussion, consideration, or review of matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

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

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

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

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

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

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

A. It is lawful for a grower or his agent to grow, a dealer or his agent to deal in, or a processor or his agent to process industrial hemp in the Commonwealth for any lawful purpose. No grower or his agent, dealer or his agent, or processor or his agent shall be prosecuted under ~~§ 18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-250, or 18.2-250.1~~ *3.2-4160, 3.2-4161, 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4170, or 3.2-4175* for the possession, growing, dealing, or processing of industrial hemp. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of

any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.), it shall not be necessary to negate any exception, excuse, proviso, or exemption contained in this chapter or the Drug Control Act, and the burden of proof of any such exception, excuse, proviso, or exemption shall be on the defendant.

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

C. No person shall be prosecuted under § ~~18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-250, or 18.2-250.1~~ 3.2-4160, 3.2-4161, 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4170, or 3.2-4175 for the involuntary growth of industrial hemp through the inadvertent natural spread of seeds or pollen as a result of proximity to a production field, dealership, or process site.

#### CHAPTER 41.2.

#### MARIJUANA.

#### Article 1.

#### General Provisions.

#### § 3.2-4122. Definitions.

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

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

"Cultivation" or "cultivate" means the planting, propagation, growing, harvesting, drying, curing, grading, trimming, or other similar processing of marijuana for use or sale. "Cultivation" or "cultivate" does not include manufacturing or testing.

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

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

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

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

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

"Marijuana" means any part of a plant of the genus *Cannabis* whether growing or not, its seeds, its resin, or any extract containing one or more cannabinoids; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. "Marijuana" does not include the mature stalks of such plant, fiber produced from such stalk, or oil or cake made from the seeds of such plant, unless such stalks, fiber, oil, or cake is combined with other parts of plants of the genus *Cannabis*. "Marijuana" does not include (i) industrial hemp, as defined in § 3.2-4112, that is possessed by a person registered pursuant to § 3.2-4115 or his agent or (ii) a hemp product, as defined in § 3.2-4112, containing a tetrahydrocannabinol concentration of no greater than 0.3 percent that is derived from industrial hemp, as defined in § 3.2-4112, that is grown, dealt, or processed in compliance with state or federal law.

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

"Marijuana cultivation facility" means a facility licensed under this chapter to purchase marijuana plants and seeds from other marijuana cultivation facilities; to cultivate, label, and package marijuana; to sell marijuana to marijuana manufacturing facilities, to retail marijuana stores, and to other marijuana cultivation facilities; and to sell marijuana plants and seeds to other marijuana cultivation facilities and immature marijuana plants and seedlings to retail marijuana stores.

"Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana manufacturing facility, or a retail marijuana store.

"Marijuana manufacturing facility" means a facility licensed under this chapter to purchase marijuana from a marijuana cultivation facility or another marijuana manufacturing facility; to manufacture, label, and package marijuana and marijuana products; and to sell marijuana and marijuana products to retail marijuana stores and to other marijuana manufacturing facilities.

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

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



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

"Non-retail marijuana products" means marijuana products that are not manufactured and sold by a licensed marijuana establishment.

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

"Retail marijuana" means marijuana that is cultivated, manufactured, or sold by a licensed marijuana establishment.

"Retail marijuana products" means marijuana products that are manufactured and sold by a licensed marijuana establishment.

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

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

### **§ 3.2-4123. Powers and duties of the Board.**

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

1. Adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 3.2-4124;

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

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

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

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

### **§ 3.2-4124. Authority of the Board to adopt regulations.**

A. The Board may adopt reasonable regulations, not inconsistent with this chapter or the general laws of the Commonwealth, that it deems necessary to carry out the provisions of this chapter and to prevent the illegal cultivation, manufacture, sale, and testing of retail marijuana and retail marijuana products. The Board may amend or repeal such regulations. Such regulations shall be adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

B. The Board shall adopt regulations that:

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

2. Provide a schedule of application, licensing, and renewal fees for marijuana establishments;

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

4. Require inspections of all licensees at a frequency determined by the Board;

5. Govern the outdoor cultivation of marijuana by a marijuana cultivation facility licensee, including security requirements specific to outdoor cultivation operations and requirements for shielding outdoor cultivation operations from public view;

6. Establish sanitary standards for retail marijuana product preparation;

7. Establish a testing program for retail marijuana and retail marijuana products pursuant to § 3.2-4148;

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

9. Establish reasonable time, place, and manner restrictions on outdoor advertising of retail

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

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

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

C. Board regulations shall be uniform in their application.

D. Courts shall take judicial notice of Board regulations.

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

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

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

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

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

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

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

**§ 3.2-4128. Employment practices.**

An employer:

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

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

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

**Article 2.**

**Administration of Licenses.**

**§ 3.2-4129. General licensing requirements; penalty.**

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

1. The applicant shall be 21 years of age or older and a resident of the Commonwealth.

2. If the applicant is a business entity, a majority of the shares, membership interests, partnership interests, or other equity ownership interests as applicable to the business entity shall be held or owned by natural persons who meet the requirements of this section or business entities whose officers, directors, managers, and general partners are all natural persons who meet the requirements of this section.

3. If the applicant is a business entity, the business entity shall be incorporated in the Commonwealth or otherwise formed or organized under the laws of the Commonwealth.

4. No applicant shall have had a license, permit, certificate, or other government-issued authorization issued in another jurisdiction allowing the cultivation, manufacture, testing, or sale of marijuana or marijuana products revoked.

5. No applicant shall have been convicted in any state, territory, or foreign jurisdiction of any felony, nor shall the applicant have been convicted of an offense in another state, territory, or foreign jurisdiction, which if committed in the Commonwealth would be a felony. Such conviction shall be treated as a felony conviction under this section regardless of its designation in the other state, territory, or foreign jurisdiction. For determining the applicability of this subdivision:

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

b. The Board shall forward the personal descriptive information along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record information check regarding such applicant. The cost of the fingerprinting and criminal history record information check shall be paid by the applicant.

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

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

6. The applicant shall not be a manufacturer, distributor, or retailer of alcoholic beverages licensed under Chapter 2 (§ 4.1-200 et seq.) of Title 4.1.

B. Any application filed hereunder shall be verified by the oath or affirmation of the applicant, or if the applicant is a business entity, every officer, director, manager, and general partner of the business entity, that all of the information contained therein is true. Any person who knowingly makes a false statement to the Board for the purposes of obtaining a license under this chapter is guilty of a Class 4 felony. The Board shall revoke the license of a licensee if, subsequent to the issuance of the license, the Board determines that the licensee knowingly or recklessly made a false statement of material fact to the Board in applying for the license.

**§ 3.2-4130. Notice to localities.**

The Board shall promptly notify the local governing body of each license application through the county or city attorney or the chief law-enforcement officer of the locality. Local governing bodies shall submit objections to the granting of a license within 30 days of the filing of the application.

**§ 3.2-4131. Multiple licenses awarded to one person permitted; exceptions.**

A person shall be permitted to possess one or any combination of the following licenses: marijuana cultivation facility license, marijuana manufacturing facility license, or retail marijuana store license. However, no licensee who has been issued either a marijuana cultivation facility license, marijuana manufacturing facility license, or retail marijuana store license shall be issued a marijuana testing facility license or have any interest in a marijuana testing facility licensee. Additionally, no licensee who has been issued a marijuana testing facility license shall be issued a marijuana cultivation facility license, marijuana manufacturing facility license, or retail marijuana store license or have any interest in a marijuana cultivation facility licensee, marijuana manufacturing facility licensee, or retail marijuana store licensee. For purposes of this section, "interest" means an equity ownership interest or a partial equity ownership interest or any other type of financial interest, including but not limited to being an investor or serving in a management position.

**§ 3.2-4132. Each license separate; posting; expiration.**

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

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

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

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

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

**§ 3.2-4133. Licensee shall maintain possession of premises.**

As a condition of licensure, a licensee shall at all times maintain possession of the licensed premises

674 of the marijuana establishment that the licensee is licensed to operate, whether pursuant to a lease,  
675 rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the  
676 premises. If the licensee fails to maintain possession of the licensed premises, the license shall be  
677 revoked by the Board.

678 **§ 3.2-4134. Conditions under which Board may refuse to grant licenses.**

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

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

682 a. Is not 21 years of age or older;

683 b. Is not a resident of the Commonwealth;

684 c. Has been convicted in any state, territory, or foreign jurisdiction of any felony or convicted of an  
685 offense in another state, territory, or foreign jurisdiction, which if committed in the Commonwealth  
686 would be a felony. Such conviction shall be treated as a felony conviction under this subsection  
687 regardless of its designation in the other state, territory, or foreign jurisdiction.

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

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

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

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

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

700 i. Is a member or employee of the Board.

701 2. The place to be occupied by the applicant:

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

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

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

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

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

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

719 **§ 3.2-4135. Conditions under which the Board shall refuse to grant licenses.**

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

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

728 **§ 3.2-4136. Hearing for refusal to grant licenses; Administrative Process Act.**

729 The action of the Board in granting or in refusing to grant any license shall be subject to review in  
730 accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Review shall be limited to the  
731 evidential record of the proceedings provided by the Board. Both the petitioner and the Board shall  
732 have the right to appeal to the Court of Appeals from any order of the court.

733 **§ 3.2-4137. Grounds for which Board may suspend or revoke licenses.**

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

735 1. The licensee or, if the licensee is a business entity, any officer, director, manager, or general

partner of the business entity:

- a. Has misrepresented a material fact in applying to the Board for such license;
- b. Within the five years immediately preceding the date of the hearing held in accordance with § 3.2-4139, has (i) been convicted in any state, territory, or foreign jurisdiction of a violation of any law, ordinance, or regulation, applicable to the cultivation, manufacture, sale, or testing of marijuana or marijuana products; (ii) violated any provision of Article 7 (§ 3.2-4159 et seq.); (iii) violated or failed or refused to comply with any regulation or order of the Board; or (iv) failed or refused to comply with any of the conditions or restrictions of the license granted by the Board;
- c. Has been convicted in any state, territory, or foreign jurisdiction of any felony or convicted of an offense in another state, territory, or foreign jurisdiction, which if committed in the Commonwealth would be a felony. Such conviction shall be treated as a felony conviction under this subsection regardless of its designation in the other state, territory, or foreign jurisdiction;
- d. Is not the legitimate owner of the business conducted under the license granted by the Board or other persons have ownership interests in the business that have not been disclosed;
- e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license granted by the Board;
- f. Has maintained the licensed premises in an unsanitary condition;
- g. Knowingly employs in the business conducted under such license, as agent or employee, any person who has been convicted in any state, territory, or foreign jurisdiction of a felony or convicted of an offense in another state, territory, or foreign jurisdiction, which if committed in the Commonwealth would be a felony, related to the cultivation, manufacture, sale, or testing of marijuana or marijuana products. Such conviction shall be treated as a felony conviction under this subsection regardless of its designation in the other state, territory, or foreign jurisdiction;
- h. Has allowed any person to consume upon the licensed premises any marijuana or marijuana products except as provided under this chapter; or
- i. Has upon the licensed premises (i) illegally possessed, distributed, sold, or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell, or use controlled substances, imitation controlled substances, drug paraphernalia, or controlled paraphernalia as those terms are defined in Articles 1 (§ 18.2-247 et seq.) and 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Article 7 of this chapter, Article 1 or 1.1 of Chapter 7 of Title 18.2, or the Drug Control Act. The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business that facilitates the commission of any of the offenses set forth herein.

2. The place occupied by the licensee:

- a. Does not conform to the requirements of the governing body of the county, city, or town in which such establishment is located, with respect to sanitation, health, construction, or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations; or
- b. Has been adjudicated a common nuisance under § 18.2-258.

**§ 3.2-4138. Grounds for which Board shall suspend or revoke licenses.**

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

**§ 3.2-4139. Suspension or revocation of licenses; notice and hearings; imposition of penalties.**

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

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the licensee, permit the licensee to inspect, copy, or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § 3.2-4123 shall provide for the production of the

797 documents sought within 10 working days, notwithstanding anything to the contrary in § 3.2-4123.

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

801 The action of the Board in suspending or revoking any license shall be subject to judicial review in  
802 accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Such review shall extend to the  
803 entire evidential record of the proceedings provided by the Board in accordance with the Administrative  
804 Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding §  
805 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed, or modified  
806 by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie  
807 in any such case.

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

824 C. Following notice to (i) the licensee of a hearing that may result in the suspension or revocation  
825 of his license or (ii) the applicant of a hearing to resolve a contested application, the Board may accept  
826 a consent agreement as authorized in subdivision 2 of § 3.2-4123. The notice shall advise the licensee  
827 or applicant of the option to (a) admit the alleged violation or the validity of the objection; (b) waive  
828 any right to a hearing or an appeal under the Administrative Process Act (§ 2.2-4000 et seq.); and (c)  
829 either (1) accept the proposed restrictions for operating under the license, (2) accept the period of  
830 suspension of the licensed privileges within the Board's parameters, (3) pay a civil penalty in lieu of the  
831 period of suspension, or any portion of the suspension as applicable, or (4) proceed to a hearing.

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

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

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

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

840 4. Establish a schedule of offenses for which any penalty may be waived upon a showing that the  
841 licensee has had no prior violations within five years immediately preceding the date of the violation.  
842 No waiver shall be granted by the Board, however, for a licensee's willful and knowing violation of this  
843 chapter or Board regulations.

844 **§ 3.2-4140. Marijuana cultivation facility license.**

845 A. The Board may issue marijuana cultivation facility licenses, which shall authorize the licensee to  
846 purchase marijuana plants and seeds from other marijuana cultivation facilities; to cultivate, label, and  
847 package retail marijuana on the premises approved by the Board; to sell retail marijuana to marijuana  
848 manufacturing facilities, to retail marijuana stores, and to other marijuana cultivation facilities; and to  
849 sell marijuana plants and seeds to other marijuana cultivation facilities and immature marijuana plants  
850 and seedlings to retail marijuana stores.

851 B. In accordance with the requirements of § 3.2-4127, a marijuana cultivation facility licensee shall  
852 track the retail marijuana it cultivates from immature marijuana plant to the point at which the  
853 marijuana plant or the marijuana produced by the marijuana plant is delivered or transferred to a  
854 marijuana manufacturing facility, a marijuana testing facility, a retail marijuana store, or another  
855 marijuana cultivation facility or is disposed of or destroyed.

856 **§ 3.2-4141. Marijuana manufacturing facility license.**

857 A. The Board may issue marijuana manufacturing facility licenses, which shall authorize the licensee  
858 to purchase retail marijuana from a marijuana cultivation facility or another marijuana manufacturing

facility; to manufacture, label, and package retail marijuana and retail marijuana products on the premises approved by the Board; and to sell retail marijuana and retail marijuana products to retail marijuana stores and to other marijuana manufacturing facilities.

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

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

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

**§ 3.2-4142. Marijuana testing facility license.**

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

B. A marijuana testing facility may develop, research, and test retail marijuana and retail marijuana products for (i) that facility, (ii) another licensee, or (iii) a person who intends to use the marijuana or marijuana product for personal use as authorized under § 3.2-4159.

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

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

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

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

**§ 3.2-4143. Retail marijuana store license.**

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

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

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

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

a. An automated dispensing or vending machine;

b. A drive-through sales window;

c. An Internet-based sales platform; or

d. A delivery service.

3. No retail marijuana store shall be permitted to sell more than any of the following during a single transaction to one person:

a. One ounce of retail marijuana;

b. Sixteen ounces of solid marijuana product;

c. Seventy-two ounces of liquid marijuana product;

d. Twelve immature marijuana plants; or

e. Six flowering marijuana plants.



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

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

924 5. No retail marijuana store shall:

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

927 b. Sell retail marijuana or retail marijuana products, including immature marijuana plants, flowering  
928 marijuana plants, and seedlings, to any person when at the time of such sale the licensee or the agent  
929 or employee of the licensee knows or has reason to believe that the person to whom the sale is made is  
930 intoxicated.

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

937 **§ 3.2-4144. To whom privileges conferred by licenses extend; liability for violations of law.**

938 The privilege of any licensee to sell retail marijuana or retail marijuana products shall extend to  
939 such licensee and to all agents or employees of such licensee for the purpose of selling retail marijuana  
940 or retail marijuana products under such license. The licensee may be held liable for any violation of  
941 this chapter or any Board regulation committed by such agents or employees in connection with their  
942 employment.

943 **§ 3.2-4145. Use or consumption of marijuana or marijuana products on premises of licensee by**  
944 **licensee, agent, or employee.**

945 Neither marijuana nor marijuana products may be used or consumed on the premises of a licensee  
946 by the licensee or any agent or employee of the licensee, except for certain sampling for quality control  
947 purposes that may be permitted by Board regulation.

948 Article 3.

949 Local Regulation of Marijuana Establishments.

950 **§ 3.2-4146. Local regulation of marijuana establishments generally.**

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

955 If a locality chooses to permit the establishment or operation of one or more types of businesses  
956 licensed under this chapter within the locality, the locality may adopt an ordinance providing licensing  
957 requirements applicable to marijuana establishments within the locality, which may include provisions  
958 establishing a local licensing fee schedule.

959 **§ 3.2-4147. Use or consumption of marijuana or marijuana products on premises of licensed retail**  
960 **marijuana store.**

961 In accordance with the provisions of § 3.2-4163, a locality may allow for the use or consumption of  
962 marijuana or marijuana products on the premises of a licensed retail marijuana store if:

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

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

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

968 Article 4.

969 Health and Safety Requirements.

970 **§ 3.2-4148. Board to establish regulations for retail marijuana and retail marijuana products**  
971 **testing.**

972 Subject to the requirements of § 3.2-4149, the Board shall establish a testing program for retail  
973 marijuana and retail marijuana products. Except as otherwise provided in this article or otherwise  
974 provided by law, the testing program shall require a licensee, prior to selling or distributing retail  
975 marijuana or a retail marijuana product to a consumer or to another licensee, to submit a  
976 representative sample of the retail marijuana or retail marijuana product, not to exceed 10 percent of  
977 the total harvest or batch, to a licensed marijuana testing facility for testing to ensure that the retail  
978 marijuana or retail marijuana product does not exceed the maximum level of allowable contamination  
979 for any contaminant that is injurious to health and for which testing is required and to ensure correct  
980 labeling. The Board shall adopt regulations (i) establishing a testing program pursuant to this section;  
981 (ii) establishing acceptable testing and research practices, including regulations relating to testing



practices, methods, and standards; quality control analysis; equipment certification and calibration; marijuana testing facility recordkeeping, documentation, and business practices; disposal of used, unused, and waste retail marijuana and retail marijuana products; and reporting of test results; (iii) identifying the types of contaminants that are injurious to health for which retail marijuana and retail marijuana products shall be tested under this article; and (iv) setting the maximum level of allowable contamination for each contaminant.

**§ 3.2-4149. Mandatory testing; scope; recordkeeping; notification; additional testing not required; required destruction.**

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Licensees shall be required to destroy harvested batches of retail marijuana or batches of retail

1043 marijuana products whose testing samples indicate noncompliance with the health and safety standards  
1044 required by this article and the regulations adopted by the Board pursuant to this article, unless  
1045 remedial measures can bring the retail marijuana or retail marijuana products into compliance with  
1046 such required health and safety standards.

1047 **§ 3.2-4150. Labeling and packaging requirements; prohibitions.**

1048 A. Retail marijuana and retail marijuana products to be sold or offered for sale by a licensee to a  
1049 consumer in accordance with the provisions of this chapter shall be labeled with the following  
1050 information:

1051 1. Identification of the type of marijuana or marijuana product and the date of cultivation,  
1052 manufacturing, and packaging;

1053 2. The license numbers of the marijuana cultivation facility, the marijuana manufacturing facility,  
1054 and the retail marijuana store where the retail marijuana or retail marijuana product was cultivated,  
1055 manufactured, and offered for sale, as applicable;

1056 3. A statement of the net weight of the retail marijuana or retail marijuana product;

1057 4. Information concerning (i) pharmacologically active ingredients, including tetrahydrocannabinol  
1058 (THC), cannabidiol (CBD), and other cannabinoid content; (ii) the THC and other cannabinoid amount  
1059 in milligrams per serving, the total servings per package, and the THC and other cannabinoid amount  
1060 in milligrams for the total package; and (iii) information about the potency of the THC and other  
1061 cannabinoid content;

1062 5. Information on gases, solvents, and chemicals used in marijuana extraction, if applicable;

1063 6. Instructions on usage;

1064 7. For retail marijuana products, a list of ingredients and possible allergens and a recommended use  
1065 by date or expiration date;

1066 8. For edible retail marijuana products, a nutritional fact panel;

1067 9. The following statements, prominently displayed in bold print and in a clear and legible fashion:

1068 a. For retail marijuana: "GOVERNMENT WARNING: THIS PACKAGE CONTAINS MARIJUANA.  
1069 KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA MAY ONLY BE POSSESSED  
1070 OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER. MARIJUANA USE WHILE  
1071 PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF MARIJUANA IMPAIRS  
1072 YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

1073 b. For retail marijuana products: "GOVERNMENT WARNING: THIS PACKAGE CONTAINS  
1074 MARIJUANA. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA PRODUCTS  
1075 MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER.  
1076 MARIJUANA USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION  
1077 OF MARIJUANA IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE  
1078 EXTREME CAUTION."; and

1079 10. Any other information required by Board regulations.

1080 B. Retail marijuana and retail marijuana products to be sold or offered for sale by a licensee to a  
1081 consumer in accordance with the provisions of this chapter shall be packaged in the following manner:

1082 1. Retail marijuana and retail marijuana products shall be prepackaged in child-resistant,  
1083 tamper-evident, and resealable packaging that is opaque or shall be placed at the final point of sale to  
1084 a consumer in child-resistant, tamper-evident, and resealable packaging that is opaque;

1085 2. Packaging for multi-serving liquid marijuana products shall include an integral measurement  
1086 component; and

1087 3. Packaging shall comply with any other requirements imposed by Board regulations.

1088 C. No retail marijuana or retail marijuana products to be sold or offered for sale by a licensee to a  
1089 consumer in accordance with the provisions of this chapter shall:

1090 1. Be labeled or packaged in violation of a federal trademark law or regulation;

1091 2. Be labeled or packaged in a manner that is specifically designed to appeal particularly to persons  
1092 under 21 years of age;

1093 3. Be labeled or packaged in a manner that obscures identifying information on the label;

1094 4. Be labeled or packaged using a false or misleading label;

1095 5. Be sold or offered for sale using a label or packaging that depicts a human, animal, or fruit; or

1096 6. Be labeled or packaged in violation of any other labeling or packaging requirements imposed by  
1097 Board regulations.

1098 **§ 3.2-4151. Advertising and marketing restrictions.**

1099 A. As used in this section, unless the context requires a different meaning:

1100 "Advertisement" includes any written or verbal statement, illustration, or depiction that is calculated  
1101 to induce sales of retail marijuana or retail marijuana products, including any written, printed, graphic,  
1102 or other material, any billboard, sign, or other outdoor display, any publication, or any radio or  
1103 television broadcast.

1104 "Health-related statement" means any statement related to health and includes statements of a

curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of retail marijuana or retail marijuana products and health benefits or effects on health.

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

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

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

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

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

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

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

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

E. No licensee shall give away any amount of retail marijuana or retail marijuana products, or any marijuana accessories, as part of a business promotion or other commercial activity.

F. No licensee shall include on the label of any retail marijuana or retail marijuana product or publish or disseminate advertising or marketing containing any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of marijuana consumption.

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

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

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

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

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

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

6. All lawfully erected outdoor retail marijuana or retail marijuana product signs shall comply with the provisions of this chapter, Board regulations, and Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 and regulations adopted pursuant thereto by the Commonwealth Transportation Board. Further, any outdoor retail marijuana or retail marijuana product directional sign located or to be located on highway

rights-of-way shall also be governed by and comply with the Integrated Directional Signing Program administered by the Virginia Department of Transportation or its agents.

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

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

**§ 3.2-4152. Other health and safety requirements for edible marijuana products.**

In addition to all other applicable provisions of this article, edible marijuana products to be sold or offered for sale by a licensee to a consumer in accordance with this chapter:

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

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

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

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

5. Shall not contain additives that are:

a. Toxic or harmful to human beings;

b. Specifically designed to make the product more addictive;

c. Misleading to consumers; or

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

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

**§ 3.2-4153. Health and safety regulations.**

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

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

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

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

**Article 5.**

**Home Cultivation of Marijuana for Personal Use.**

**§ 3.2-4154. Home cultivation of marijuana for personal use.**

A. A person 21 years of age or older may cultivate up to three mature marijuana plants, three immature marijuana plants, and an unlimited number of seedlings for personal use on a parcel or tract of land:

1. On which the person is domiciled;

2. Owned by the person on which the person is not domiciled; or

3. Not owned by the person and on which the person is not domiciled so long as the owner of the parcel or tract of land permits, by written agreement, the cultivation and care of the marijuana plants on the parcel or tract of land by such person.

A person may cultivate marijuana plants and seedlings authorized under this section at multiple locations so long as such cultivation activities otherwise meet all of the requirements of this section.

B. A person who cultivates marijuana for personal use pursuant to this section shall:

1. Ensure that the marijuana is not visible from a public way without the use of aircraft, binoculars, or other optical aids;

2. Take reasonable precautions to prevent unauthorized access by persons under 21 years of age;

3. Attach to each mature marijuana plant and immature marijuana plant a legible tag that includes the person's name, driver's license number or identification number, a notation that the marijuana plant is being grown for personal use as authorized under this section, and if the cultivation is on a parcel or

tract of land owned by another person, the name of such owner; and

4. Comply with all applicable local regulations relating to the home cultivation of marijuana for personal use that have been adopted in accordance with subsection C.

C. A locality may regulate the home cultivation of marijuana for personal use within the locality.

1. A locality may, by ordinance, limit the total number of mature marijuana plants that may be cultivated on any one parcel or tract of land within the locality, so long as that ordinance or regulation allows for the cultivation of at least three mature marijuana plants, three immature marijuana plants, and an unlimited number of seedlings by each person 21 years of age or older who is domiciled on a parcel or tract of land.

2. A locality may not entirely prohibit the home cultivation of marijuana for personal use within the locality, restrict the areas within the locality in which home cultivation of marijuana for personal use is allowed, or charge a licensing or other fee to a person relating to the home cultivation of marijuana for personal use within the locality.

**§ 3.2-4155. Home extraction of marijuana concentrate prohibited.**

A person may not manufacture marijuana concentrate from home-cultivated marijuana. The owner of a parcel or tract of land may not intentionally or knowingly allow another person to manufacture marijuana concentrate from home-cultivated marijuana on such parcel or tract of land.

**§ 3.2-4156. Violations; penalty.**

A person who is convicted of a violation of any provision of this article is guilty of a Class 1 misdemeanor.

**Article 6.**

**Retail Marijuana Tax.**

**§ 3.2-4157. State retail marijuana tax.**

A. In addition to any taxes imposed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, there is hereby levied and imposed a tax on retail marijuana and retail marijuana products sold by a retail marijuana store at a rate of 9.7 percent.

B. The tax shall be administered and collected by the Department of Taxation in the same manner and subject to the same penalties as provided for the state retail sales tax under § 58.1-603.

C. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller as follows:

1. Sixty-seven percent of the revenues shall be deposited into the general fund; and

2. Thirty-three percent of the revenues shall be deposited into a special fund hereby created on the books of the Comptroller under the name "Retail Marijuana Education Support Fund" (the Fund). Moneys deposited in the Fund shall be used solely for purposes of public education. Such moneys shall be appropriated as provided in the general appropriation act.

**§ 3.2-4158. Counties and cities authorized to impose additional retail marijuana tax.**

A. Any county or city is hereby authorized to levy and impose a tax on retail marijuana and retail marijuana products sold by a retail marijuana store in such county or city at a rate not to exceed five percent.

B. Such tax shall be levied only if the tax is approved in a referendum within the county or city, which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the governing body of the county or city or on the filing of a petition signed by a number of registered voters in the county or city equal in number to at least 10 percent of the number of voters registered in the county or city, as applicable on January 1 of the year in which the petition is filed with the court of such county or city. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county or city once a week for three consecutive weeks prior to the election. If voters affirm the levy of a local retail marijuana tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the governing body or such petition states for what projects or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating the projects or purposes for which the revenues collected from the tax are to be used.

C. Any tax levied pursuant to this section shall be collected by the Department of Taxation in the same manner and subject to the same penalties as provided for the state retail sales tax under § 58.1-603 and shall be distributed in the same manner as the local sales tax under § 58.1-605.

**Article 7.**

**Prohibited Practices; Penalties; Procedural Matters.**

**§ 3.2-4159. Possession of retail marijuana and retail marijuana products by persons 21 years of age or older lawful.**

Except as otherwise provided in this chapter and notwithstanding any other provision of law, a person 21 years of age or older may lawfully possess retail marijuana or retail marijuana products.

**§ 3.2-4160. Possession of retail marijuana and retail marijuana products by persons under 21**

1289 *years of age prohibited; civil penalty.*

1290 A. It is unlawful for any person under 21 years of age to knowingly or intentionally possess retail  
1291 marijuana or retail marijuana products unless the substance was obtained directly from, or pursuant to,  
1292 a valid prescription or order of a practitioner while acting in the course of his professional practice, or  
1293 except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.). The attorney for the  
1294 Commonwealth or the county, city, or town attorney may prosecute such a case.

1295 Upon the prosecution of a person for violation of this section, ownership or occupancy of the  
1296 premises or vehicle upon or in which retail marijuana or retail marijuana products were found shall not  
1297 create a presumption that such person either knowingly or intentionally possessed such retail marijuana  
1298 or retail marijuana products.

1299 Any person who violates this section is subject to a civil penalty of no more than \$25. A violation of  
1300 this section is a civil offense. Any civil penalties collected pursuant to this section shall be deposited  
1301 into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02.  
1302 Violations of this section by an adult shall be prepayable according to the procedures in § 16.1-69.40:2.

1303 B. Any violation of this section shall be charged by summons. A summons for a violation of this  
1304 section may be executed by a law-enforcement officer when such violation is observed by such officer.  
1305 The summons used by a law-enforcement officer pursuant to this section shall be in form the same as  
1306 the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. No court  
1307 costs shall be assessed for violations of this section. A person's criminal history record information as  
1308 defined in § 9.1-101 shall not include records of any charges or judgments for a violation of this  
1309 section, and records of such charges or judgments shall not be reported to the Central Criminal  
1310 Records Exchange. However, if a violation of this section occurs while an individual is operating a  
1311 commercial motor vehicle as defined in § 46.2-341.4, such violation shall be reported to the Department  
1312 of Motor Vehicles and shall be included on such individual's driving record.

1313 C. The procedure for appeal and trial of any violation of this section shall be the same as provided  
1314 by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall  
1315 be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth  
1316 shall be required to prove its case beyond a reasonable doubt.

1317 D. The provisions of this section shall not apply to members of state, federal, county, city, or town  
1318 law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as  
1319 handlers of dogs trained in the detection of controlled substances when possession of marijuana is  
1320 necessary for the performance of their duties.

1321 E. The provisions of this section involving retail marijuana products in the form of cannabis oil as  
1322 that term is defined in § 54.1-3408.3 shall not apply to any person who possesses such oil pursuant to a  
1323 valid written certification issued by a practitioner in the course of his professional practice pursuant to  
1324 § 54.1-3408.3 for treatment or to alleviate the symptoms of (i) the person's diagnosed condition or  
1325 disease, (ii) if such person is the parent or legal guardian of a minor or of an incapacitated adult as  
1326 defined in § 18.2-369, such minor's or incapacitated adult's diagnosed condition or disease, or (iii) if  
1327 such person has been designated as a registered agent pursuant to § 54.1-3408.3, the diagnosed  
1328 condition or disease of his principal or, if the principal is the parent or legal guardian of a minor or of  
1329 an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's diagnosed  
1330 condition or disease.

1331 F. No individual shall be subject to arrest or prosecution for possession of retail marijuana or retail  
1332 marijuana products pursuant to this section if:

1333 1. Such individual (i) in good faith, seeks or obtains emergency medical attention (a) for himself, if  
1334 he is experiencing an overdose, or (b) for another individual, if such other individual is experiencing an  
1335 overdose, or (ii) is experiencing an overdose and another individual, in good faith, seeks or obtains  
1336 emergency medical attention for such individual, by contemporaneously reporting such overdose to a  
1337 firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a  
1338 law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system;

1339 2. Such individual remains at the scene of the overdose or at any alternative location to which he or  
1340 the person requiring emergency medical attention has been transported until a law-enforcement officer  
1341 responds to the report of an overdose. If no law-enforcement officer is present at the scene of the  
1342 overdose or at the alternative location, then such individual shall cooperate with law enforcement as  
1343 otherwise set forth herein;

1344 3. Such individual identifies himself to the law-enforcement officer who responds to the report of the  
1345 overdose; and

1346 4. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a  
1347 result of the individual seeking or obtaining emergency medical attention.

1348 The provisions of this subsection shall not apply to any person who seeks or obtains emergency  
1349 medical attention for himself or another individual, or to a person experiencing an overdose when  
1350 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.

This subsection does not establish protection from arrest or prosecution for any individual or offense other than those listed in this section.

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.

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

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

H. No law-enforcement officer, as defined in § 9.1-101, may lawfully stop, search, or seize any person, place, or thing solely on the basis of the odor of marijuana and no evidence discovered or obtained pursuant to a violation of this subsection, including evidence discovered or obtained with the person's consent, shall be admissible in any trial, hearing, or other proceeding.

I. The provisions of subsection F shall not apply in any airport as defined in § 5.1-1 or if the violation occurs in a commercial motor vehicle as defined in § 46.2-341.4.

**§ 3.2-4161. Possession of non-retail marijuana and non-retail marijuana products prohibited; civil penalty.**

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

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

Any person who violates this section is subject to a civil penalty of no more than \$25. A violation of this section is a civil offense. Any civil penalties collected pursuant to this section shall be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02. Violations of this section by an adult shall be prepayable according to the procedures in § 16.1-69.40:2.

B. Any violation of this section shall be charged by summons. A summons for a violation of this section may be executed by a law-enforcement officer when such violation is observed by such officer. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. No court costs shall be assessed for violations of this section. A person's criminal history record information as defined in § 9.1-101 shall not include records of any charges or judgments for a violation of this section, and records of such charges or judgments shall not be reported to the Central Criminal Records Exchange. However, if a violation of this section occurs while an individual is operating a commercial motor vehicle as defined in § 46.2-341.4, such violation shall be reported to the Department of Motor Vehicles and shall be included on such individual's driving record.

C. The procedure for appeal and trial of any violation of this section shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

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

E. The provisions of this section involving non-retail marijuana products in the form of cannabis oil as that term is defined in § 54.1-3408.3 shall not apply to any person who possesses such oil pursuant to a valid written certification issued by a practitioner in the course of his professional practice pursuant to § 54.1-3408.3 for treatment or to alleviate the symptoms of (i) the person's diagnosed condition or disease, (ii) if such person is the parent or legal guardian of a minor or of an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's diagnosed condition or disease, or (iii) if such person has been designated as a registered agent pursuant to § 54.1-3408.3, the diagnosed condition or disease of his principal or, if the principal is the parent or legal guardian of a minor or of an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's diagnosed condition or disease.

F. No individual shall be subject to arrest or prosecution for possession of non-retail marijuana or non-retail marijuana products pursuant to this section if:



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

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

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

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

The provisions of this subsection 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.

This subsection does not establish protection from arrest or prosecution for any individual or offense other than those listed in this section.

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.

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

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

H. No law-enforcement officer, as defined in § 9.1-101, may lawfully stop, search, or seize any person, place, or thing solely on the basis of the odor of marijuana and no evidence discovered or obtained pursuant to a violation of this subsection, including evidence discovered or obtained with the person's consent, shall be admissible in any trial, hearing, or other proceeding.

I. The provisions of subsection F shall not apply in any airport as defined in § 5.1-1 or if the violation occurs in a commercial motor vehicle as defined in § 46.2-341.4.

**§ 3.2-4162. Underage possession of retail marijuana and retail marijuana products; possession of non-retail marijuana or non-retail marijuana products; limits on dissemination of criminal history record information; prohibited practices by employers, educational institutions, and state and local governments; penalty.**

A. No records relating to the arrest, criminal charge, or conviction of a person for a violation of § 3.2-4160 or 3.2-4161 or 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 be open for public inspection or otherwise disclosed, provided that such records may be disseminated (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 a 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.

**§ 3.2-4163. Public consumption prohibited; civil penalty.**

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

1. In a private residence in which the person is domiciled, including the curtilage thereof;
2. On private property on which the person is not domiciled, provided that such property is not generally accessible by the public and the person is explicitly permitted to use or consume marijuana or marijuana products on the property by the owner or lessee of the property; or
3. On the premises of a licensed retail marijuana store if such store has been permitted to allow the use or consumption of marijuana or marijuana products in designated areas of the store by a locality pursuant to § 3.2-4147.

B. Any person who violates this section is subject to a civil penalty of no more than \$25. A violation of this section is a civil offense. Any civil penalties collected pursuant to this section shall be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02.

**§ 3.2-4164. Illegal cultivation or manufacture of marijuana or marijuana products; penalty.**

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

A person who violates this section 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.

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

C. The provisions of this section prohibiting the cultivation of marijuana without obtaining a license under this chapter shall not apply to persons who cultivate marijuana for personal use in accordance

1535 with the provisions of Article 5 (§ 3.2-4154 et seq.).

1536 **§ 3.2-4165. Conspiracy to violate § 3.2-4164; penalty.**

1537 If two or more persons conspire together to do any act that is in violation of § 3.2-4164, and one or  
1538 more of these persons does any act to effect the object of the conspiracy, each of the parties to such  
1539 conspiracy is guilty of a Class 6 felony.

1540 **§ 3.2-4166. Illegal sale or distribution of marijuana and marijuana products; illegal possession**  
1541 **with intent to sell or distribute marijuana or marijuana products; penalties.**

1542 A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is illegal for any person to  
1543 sell or distribute, or possess with the intent to sell or distribute, marijuana or marijuana products  
1544 without being licensed under this chapter to cultivate, manufacture, sell, or test retail marijuana or  
1545 retail marijuana products.

1546 B. Any person who violates this section with respect to:

1547 1. Not more than one ounce of marijuana is guilty of a Class 1 misdemeanor;

1548 2. More than one ounce but not more than five pounds of marijuana is guilty of a Class 5 felony;

1549 3. More than five pounds of marijuana is guilty of a felony punishable by imprisonment of not less  
1550 than five nor more than 30 years.

1551 There shall be a rebuttable presumption that a person who possesses no more than one ounce of  
1552 marijuana possesses it for personal use.

1553 C. When a person is convicted of a third or subsequent felony offense under this section and it is  
1554 alleged in the warrant, indictment, or information that he has been before convicted of two or more  
1555 felony offenses under this section or of substantially similar offenses in any other jurisdiction which  
1556 offenses would be felonies if committed in the Commonwealth, and such prior convictions occurred  
1557 before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced  
1558 to imprisonment for life or for any period not less than five years, five years of which shall be a  
1559 mandatory minimum term of imprisonment to be served consecutively with any other sentence, and he  
1560 shall be fined not more than \$500,000.

1561 **§ 3.2-4167. Illegal gift of marijuana or marijuana products; penalties.**

1562 A. Except as otherwise provided by this chapter or otherwise provided by law, no person shall give  
1563 retail or non-retail marijuana or retail or non-retail marijuana products to any person.

1564 Any person who violates this subsection is subject to a civil penalty of no more than \$25. A violation  
1565 of this subsection is a civil offense. Any civil penalties collected pursuant to this section shall be  
1566 deposited into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02.

1567 B. Any person who gives, distributes, or possesses marijuana as an accommodation and not with  
1568 intent to profit thereby to an inmate of a state or local correctional facility as defined in § 53.1-1, or in  
1569 the custody of an employee thereof, is guilty of a Class 4 felony.

1570 C. Notwithstanding the provisions of this section or § 3.2-4166, a non-licensee shall be permitted to  
1571 give one ounce or less of retail marijuana or 16 ounces or less of solid retail marijuana product to a  
1572 personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or  
1573 device to evade the restrictions set forth in this section or § 3.2-4166.

1574 **§ 3.2-4168. Distribution of marijuana to persons under 18 years of age prohibited; penalties.**

1575 Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person  
1576 who is at least 18 years of age to knowingly or intentionally (i) distribute marijuana to any person  
1577 under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of  
1578 age to assist in such distribution of marijuana. Any person violating this provision shall upon conviction  
1579 be imprisoned in a state correctional facility for a period not less than 10 or more than 50 years, and  
1580 fined not more than \$100,000. Five years of the sentence imposed for a conviction under this section  
1581 involving one ounce or more of marijuana shall be a mandatory minimum sentence. Two years of the  
1582 sentence imposed for a conviction under this section involving less than one ounce of marijuana shall be  
1583 a mandatory minimum sentence.

1584 **§ 3.2-4169. Illegal manufacturing, distribution, sale, or possession of marijuana concentrate;**  
1585 **penalty.**

1586 No person shall manufacture, distribute, sell, or possess marijuana concentrate. A person who is  
1587 convicted of a violation of this section is guilty of a Class 1 misdemeanor.

1588 **§ 3.2-4170. Illegal manufacturing, distribution, sale, etc., of a mixture or substance containing a**  
1589 **detectable amount of non-retail marijuana; penalties.**

1590 A. Any person who manufactures, sells, gives, distributes, or possesses with the intent to  
1591 manufacture, sell, give, or distribute 100 kilograms or more of a mixture or substance containing a  
1592 detectable amount of non-retail marijuana is guilty of a felony punishable by a fine of not more than \$1  
1593 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum  
1594 sentence. Such mandatory minimum sentence shall not be applicable if the court finds that (i) the person  
1595 does not have a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did  
1596 not use violence or credible threats of violence or possess a firearm or other dangerous weapon in

connection with the offense or induce another participant in the offense to do so; (iii) the offense did not result in death or serious bodily injury to any person; (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise as defined in subsection I of § 18.2-248; and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

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

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

**§ 3.2-4171. Manufacturing, distributing, and obtaining marijuana by fraud, deceit, forgery, etc.; penalties.**

A. It is unlawful for any person to procure or attempt to procure the administration of marijuana (i) by fraud, deceit, misrepresentation, embezzlement, or subterfuge; (ii) by the forgery or alteration of a prescription or of any written order; (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.

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

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

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

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

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

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

Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to

report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall find the defendant guilty of a Class 1 misdemeanor.

**§ 3.2-4172. Prohibition on the sale or manufacture of marijuana or marijuana products on or near certain properties; penalties.**

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

1. Upon the property, including buildings and grounds, of any public or private elementary or secondary school, any institution of higher education, or any clearly marked licensed child day center as defined in § 22.1-289.02;

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

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

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

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

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

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

B. A violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section is guilty of a Class 5 felony. However, if such person proves that he sold marijuana or marijuana products only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana or marijuana products to use or become addicted to or dependent upon such marijuana or marijuana products, he is guilty of a Class 1 misdemeanor.

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

**§ 3.2-4173. Possessing or displaying firearm while illegally manufacturing, etc., possessing with intent to manufacture, etc., more than one pound of marijuana; penalty.**

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

**§ 3.2-4174. Delivery of marijuana to prisoners or committed persons; penalty.**

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

**§ 3.2-4175. Transporting non-retail marijuana into the Commonwealth; penalty.**

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

**§ 3.2-4176. Illegal testing of marijuana and marijuana products; penalty.**

Except as otherwise provided by this chapter or otherwise provided by law, no person shall test marijuana or marijuana products without being licensed under this chapter to cultivate or test marijuana or marijuana products.

A person who violates this section is guilty of a Class 6 felony.

**§ 3.2-4177. Illegal sale or advertisement of marijuana paraphernalia; penalties.**

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

B. It is unlawful for any person under 21 years of age to possess marijuana paraphernalia. Any person who violates this subsection is subject to a civil penalty of no more than \$25. A violation of this subsection is a civil offense. Any civil penalties collected pursuant to this section shall be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02.

C. It is unlawful for any person to sell or distribute, or possess with the intent to sell or distribute, marijuana paraphernalia to any person under 21 years of age. Any person who violates this subsection is subject to a civil penalty of no more than \$25. A violation of this subsection is a civil offense. Any civil penalties collected pursuant to this section shall be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02.

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

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

1. Constitutionally admissible statements by the accused concerning the use of the object;
2. The proximity of the object to marijuana, which proximity is actually known to the accused;
3. Instructions, oral or written, provided with the object concerning its use;
4. Descriptive materials accompanying the object that explain or depict its use;
5. National and local advertising within the actual knowledge of the accused concerning its use;
6. The manner in which the object is displayed for sale;
7. Whether the accused is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
8. Evidence of the ratio of sales of the objects defined in subsection A to the total sales of the business enterprise;
9. The existence and scope of legitimate uses for the object in the community;
10. Expert testimony concerning its use or the purpose for which it was designed; and
11. Relevant evidence of the intent of the accused to deliver it to persons who he knows, or should reasonably know, are under 21 years of age. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this article shall not prevent a finding that the object is intended for use or designed for use as marijuana paraphernalia.

**§ 3.2-4178. Distribution, sale, or display of printed material advertising instruments for use in administering marijuana to persons younger than 21 years of age; penalty.**

It is a Class 1 misdemeanor for any person knowingly to sell, distribute, or display for sale to a person younger than 21 years of age any book, pamphlet, periodical, or other printed matter which he knows advertises for sale any instrument, device, article, or contrivance for advertised use in unlawfully ingesting, smoking, administering, preparing, or growing marijuana.

**§ 3.2-4179. Persons to whom retail marijuana or retail marijuana products may not be sold; proof of legal age; penalties.**

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

B. Any person who sells any retail marijuana or retail marijuana products to a person who is under 21 years of age and at the time of the sale does not require the person to present bona fide evidence of legal age indicating that the person is 21 years of age or older is guilty of a violation of this subsection. Bona fide evidence of legal age is limited to any evidence that is or reasonably appears to be an unexpired driver's license issued by any state of the United States or the District of Columbia, a military identification card, a United States passport or foreign government visa, an unexpired special identification card issued by the Department of Motor Vehicles, or any other valid government-issued identification card bearing the individual's photograph, signature, height, weight, and date of birth, or which bears a photograph that reasonably appears to match the appearance of the purchaser. A student identification card shall not constitute bona fide evidence of legal age for purposes of this subsection. Any person convicted of a violation of this subsection is guilty of a Class 3 misdemeanor.

1781 Notwithstanding the provisions of § 3.2-4144, the Board shall not take administrative action against a  
1782 licensee for the conduct of his employee who violates this subsection.

1783 C. No person shall be convicted of both subsections A and B for the same sale.

1784 § 3.2-4180. **Use or attempted use of altered, etc., identification to purchase retail marijuana or**  
1785 **retail marijuana products; penalty.**

1786 A. No person under 21 years of age shall use or attempt to use any (i) altered, fictitious, facsimile,  
1787 or simulated license to operate a motor vehicle; (ii) altered, fictitious, facsimile, or simulated document,  
1788 including but not limited to a birth certificate or student identification card; or (iii) motor vehicle  
1789 driver's license or other document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or other  
1790 comparable law of another jurisdiction, birth certificate, or student identification card of another person  
1791 in order to establish a false identification or false age for himself to use, consume, or purchase or  
1792 attempt to use, consume, or purchase retail marijuana or retail marijuana products.

1793 Any person who violates this section is guilty of a Class 1 misdemeanor.

1794 B. Any retail marijuana store licensee who in good faith promptly notifies the Board or any state or  
1795 local law-enforcement agency of a violation or suspected violation of this section shall be accorded  
1796 immunity from an administrative penalty for a violation of § 3.2-4179.

1797 § 3.2-4181. **Purchasing retail marijuana or retail marijuana products for one to whom they may**  
1798 **not be sold; penalty.**

1799 Any person who (i) purchases retail marijuana or retail marijuana products for another person and  
1800 at the time of such purchase knows or has reason to believe that the person for whom the retail  
1801 marijuana or retail marijuana products were purchased is intoxicated or (ii) purchases for or otherwise  
1802 gives, provides, or assists in the provision of retail marijuana or retail marijuana products to another  
1803 person when he knows or has reason to know that such person is under 21 years of age is guilty of a  
1804 Class 1 misdemeanor.

1805 § 3.2-4182. **Prohibited practices by licensees; penalty.**

1806 A. No licensee or any agent or employee of such licensee shall:

1807 1. Cultivate, manufacture, sell, or test any retail marijuana or retail marijuana products, as  
1808 applicable, of a kind other than that which such license or this chapter authorizes him to cultivate,  
1809 manufacture, sell, or test; or

1810 2. Cultivate, manufacture, sell, or test any retail marijuana or retail marijuana products, as  
1811 applicable, which such license or this chapter authorizes him to cultivate, manufacture, sell, or test, at  
1812 any place other than such license or this chapter authorizes him to cultivate, manufacture, sell, or test.

1813 B. Any person who violates this section is guilty of a Class 1 misdemeanor.

1814 § 3.2-4183. **Prohibited acts by retail marijuana store licensees; penalty.**

1815 A. In addition to the actions prohibited by § 3.2-4182, no retail marijuana store licensee or any  
1816 agent or employee of such licensee shall:

1817 1. Sell any retail marijuana or retail marijuana product which such license or this chapter  
1818 authorizes him to sell, but in a manner other than such license or this chapter authorizes him to sell;

1819 2. Sell more than the amounts permitted by subdivision B 3 of § 3.2-4143 to be sold during a single  
1820 transaction to one person;

1821 3. Except as permitted by § 3.2-4147, allow at the place described in his license the use or  
1822 consumption of retail marijuana or retail marijuana products in violation of this chapter;

1823 4. Keep at the place described in his license any marijuana or marijuana products other than that  
1824 which he is licensed to sell;

1825 5. Misrepresent any marijuana or marijuana product sold or offered for sale;

1826 6. Remove or obliterate any label or packaging affixed to any retail marijuana or retail marijuana  
1827 products offered for sale;

1828 7. Sell any retail marijuana or retail marijuana products if the label or packaging has been removed  
1829 or obliterated;

1830 8. Consume or allow the consumption by any employee of any retail marijuana or retail marijuana  
1831 product while on duty and in a position that is involved in the selling of retail marijuana or retail  
1832 marijuana products;

1833 9. Be intoxicated while on duty or allow an employee to perform his duties while intoxicated; or

1834 10. Fail or refuse to make samples of any retail marijuana or retail marijuana product available to  
1835 the Board upon request.

1836 B. Any person who violates this section is guilty of a Class 1 misdemeanor.

1837 § 3.2-4184. **Illegal labeling and packaging; penalty.**

1838 Any person who violates the labeling and packaging requirements of § 3.2-4150 or the other health  
1839 and safety requirements of § 3.2-4152 is guilty of a Class 1 misdemeanor.

1840 § 3.2-4185. **Illegal advertising and marketing; penalties.**

1841 A. Except as provided in subsection B, any person who violates the advertising and marketing  
1842 restrictions of § 3.2-4151 is guilty of a Class 1 misdemeanor.

B. For violations of § 3.2-4151 relating to distance and zoning restrictions on outdoor advertising, the Board shall give the advertiser written notice to take corrective action to either bring the advertisement into compliance with this chapter and Board regulations or to remove such advertisement. If corrective action is not taken within 30 days, the advertiser is guilty of a Class 4 misdemeanor.

**§ 3.2-4186. Using or consuming marijuana or marijuana products while operating a motor vehicle or while being a passenger in a motor vehicle; penalty.**

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

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

**§ 3.2-4187. Limitation on carrying marijuana or marijuana products in motor vehicles transporting passengers for hire; penalty.**

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

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

**§ 3.2-4188. Using, consuming, or possessing marijuana or marijuana products in or on public school grounds; penalty.**

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

B. Any person who violates this section is guilty of a Class 2 misdemeanor.

**§ 3.2-4189. Using, consuming, or possessing marijuana or marijuana products while operating a school bus; penalty.**

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

**§ 3.2-4190. Certain premises deemed common nuisance; penalties.**

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

**§ 3.2-4191. Maintaining a fortified drug house; penalty.**

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

**§ 3.2-4192. Attempts; aiding or abetting; penalty.**

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

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

**§ 3.2-4193. Failure to deliver, keep, and preserve records and accounts, or to allow examination and inspection; penalty.**

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

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

**§ 3.2-4194. Disobeying subpoena; hindering conduct of hearing; penalty.**

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



1904 *Board or a Board member.*

1905 *B. Any person who violates this section is guilty of a Class 1 misdemeanor.*

1906 **§ 3.2-4195. Punishment for violations of chapter.**

1907 *A. The provisions of this chapter shall not prevent the Board from suspending, revoking, or refusing*  
1908 *to continue the license of any person convicted of a violation of any provision of this chapter.*

1909 *B. No court shall hear such a case unless the respective attorney for the Commonwealth or his*  
1910 *assistant has been notified that such a case is pending.*

1911 **§ 3.2-4196. Search warrants.**

1912 *A. If complaint on oath is made that marijuana or marijuana products are being cultivated,*  
1913 *manufactured, sold, or tested in a particular house or other place in violation of law, the judge,*  
1914 *magistrate, or other person having authority to issue criminal warrants, to whom such complaint is*  
1915 *made, if satisfied that there is a probable cause for such belief, shall issue a warrant to search such*  
1916 *house or other place for marijuana or marijuana products. Such warrants, except as herein otherwise*  
1917 *provided, shall be issued, directed, and executed in accordance with the laws of the Commonwealth*  
1918 *pertaining to search warrants.*

1919 *B. Warrants issued under this chapter for the search of any automobile, boat, conveyance, or*  
1920 *vehicle, whether of like kind or not, or for the search of any article of baggage, whether of like kind or*  
1921 *not, for marijuana or marijuana products may be executed in any part of the Commonwealth where they*  
1922 *are overtaken and shall be made returnable before any judge within whose jurisdiction such automobile,*  
1923 *boat, conveyance, vehicle, truck, or article of baggage, or any of them, was transported or attempted to*  
1924 *be transported contrary to law.*

1925 **§ 3.2-4197. Department of Forensic Science; determination of methods for detecting concentration**  
1926 **of THC.**

1927 *The Department of Forensic Science shall determine the proper methods for detecting the*  
1928 *concentration of delta-9-tetrahydrocannabinol (THC) in substances for the purposes of this chapter and*  
1929 *§§ 54.1-3401 and 54.1-3446. The testing methodology shall use post-decarboxylation testing or other*  
1930 *equivalent method and shall consider the potential conversion of delta-9-tetrahydrocannabinol acid*  
1931 *(THC-A) into THC. The test result shall include the total available THC derived from the sum of the*  
1932 *THC and THC-A content.*

1933 **§ 3.2-4198. Certificate of forensic scientist as evidence; requiring forensic scientist to appear.**

1934 *The certificate of any forensic scientist employed by the Commonwealth on behalf of the Board or*  
1935 *the Department of Forensic Science, when signed by him, shall be evidence in all prosecutions for*  
1936 *violations of this chapter and all controversies in any judicial proceedings touching the mixture or*  
1937 *concentration analyzed by him. On motion of the accused or any party in interest, the court may require*  
1938 *the forensic scientist making the analysis to appear as a witness and be subject to cross-examination,*  
1939 *provided such motion is made within a reasonable time prior to the day on which the case is set for*  
1940 *trial.*

1941 **§ 3.2-4199. Suspended sentence conditioned upon substance abuse screening, assessment, testing,**  
1942 **and treatment or education.**

1943 *The trial judge or court trying the case of any person found guilty of a criminal violation of any law*  
1944 *concerning the use, in any manner, of marijuana shall condition any suspended sentence by first*  
1945 *requiring such person to agree to undergo a substance abuse screening and to submit to such periodic*  
1946 *substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall*  
1947 *be conducted by the supervising probation agency or by personnel of any program or agency approved*  
1948 *by the supervising probation agency. The cost of such testing ordered by the court shall be paid by the*  
1949 *Commonwealth and taxed as a part of the costs of such proceedings. The judge or court shall order the*  
1950 *person, as a condition of any suspended sentence, to undergo such treatment or education for substance*  
1951 *abuse, if available, as the judge or court deems appropriate based upon consideration of the substance*  
1952 *abuse assessment. The treatment or education shall be provided by a program or agency licensed by the*  
1953 *Department of Behavioral Health and Developmental Services or, if the court imposes a sentence of 12*  
1954 *months or less, by a similar program or services available through a local or regional jail, a local*  
1955 *community-based probation services agency established pursuant to § 9.1-174, or an ASAP program*  
1956 *certified by the Commission on VASAP.*

1957 **§ 3.2-4199.1. Commitment of convicted person for treatment for substance abuse.**

1958 *A. Whenever any person who has not previously been convicted of any criminal offense under this*  
1959 *article or under any statute of the United States or of any state relating to marijuana or has not*  
1960 *previously had a proceeding against him for violation of such an offense dismissed as provided in*  
1961 *former § 18.2-250 is found guilty of violating any law concerning the use, in any manner, of marijuana,*  
1962 *the judge or court shall require such person to undergo a substance abuse screening and to submit to*  
1963 *such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. The*  
1964 *cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the*  
1965 *costs of the criminal proceedings. The judge or court shall also order the person to undergo such*



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

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

**§ 3.2-4199.2. Possession or distribution of marijuana for medical purposes permitted.**

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

1. 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;

2. The dispensing or distributing of marijuana or tetrahydrocannabinol for medical purposes by a medical doctor when such action occurs in the course of his professional practice for treatment of cancer or glaucoma; or

3. The dispensing or distributing of marijuana or tetrahydrocannabinol by a pharmacist 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.

**§ 3.2-4199.3. Possession or distribution of cannabidiol oil or THC-A oil; public schools.**

No school nurse employed by a local school board, person employed by a local health department who is assigned to the public school pursuant to an agreement between the local health department and the school board, or other person employed by or contracted with a local school board to deliver health-related services shall be prosecuted under § 3.2-4160, 3.2-4161, 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4168, 3.2-4170, 18.2-248, 18.2-250, 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.

**§ 3.2-4199.4. 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 § 3.2-4160, 3.2-4161, 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4168, 3.2-4170, 18.2-248, or 18.2-250 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.

**§ 3.2-4199.5. 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

2027 *hemp grower, or a licensed industrial hemp processor for the purpose of performing required testing*  
 2028 *shall be prosecuted under § 3.2-4160, 3.2-4161, 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4168, 3.2-4170,*  
 2029 *18.2-248, 18.2-250, or 18.2-255 for the possession or distribution of cannabidiol oil, THC-A oil, or*  
 2030 *industrial hemp, or for storing cannabidiol oil, THC-A oil, or industrial hemp for testing purposes in*  
 2031 *accordance with regulations adopted by the Board of Pharmacy and the Board of Agriculture and*  
 2032 *Consumer Services.*

2033 **§ 3.2-4199.6. Interaction with provisions concerning pharmaceutical processing of cannabidiol oil**  
 2034 **and THC-A oil.**

2035 *Nothing in this article shall be construed to prohibit or penalize any conduct that is permitted by*  
 2036 *Article 4.2 (§ 54.1-3442.5 et seq.) of Chapter 34 of Title 54.1.*

2037 **§ 4.1-225. Grounds for which Board may suspend or revoke licenses.**

2038 The Board may suspend or revoke any license other than a brewery license, in which case the Board  
 2039 may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:

2040 1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an  
 2041 association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the  
 2042 licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital  
 2043 stock, or if the licensee is a limited liability company, any member-manager or any member owning 10  
 2044 percent or more of the membership interest of the limited liability company:

2045 a. Has misrepresented a material fact in applying to the Board for such license;

2046 b. Within the five years immediately preceding the date of the hearing held in accordance with  
 2047 § 4.1-227, has (i) been convicted of a violation of any law, ordinance or regulation of the  
 2048 Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States,  
 2049 applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated  
 2050 any provision of Chapter 3 (§ 4.1-300 et seq.); (iii) committed a violation of the Wine Franchise Act  
 2051 (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated or failed or  
 2052 refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply  
 2053 with any of the conditions or restrictions of the license granted by the Board;

2054 c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude  
 2055 under the laws of any state, or of the United States;

2056 d. Is not the legitimate owner of the business conducted under the license granted by the Board, or  
 2057 other persons have ownership interests in the business which have not been disclosed;

2058 e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business  
 2059 conducted under the license granted by the Board;

2060 f. Has been intoxicated or under the influence of some self-administered drug while upon the  
 2061 licensed premises;

2062 g. Has maintained the licensed premises in an unsanitary condition, or allowed such premises to  
 2063 become a meeting place or rendezvous for members of a criminal street gang as defined in § 18.2-46.1  
 2064 or persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;

2065 h. Knowingly employs in the business conducted under such license, as agent, servant, or employee,  
 2066 other than a busboy, cook or other kitchen help, any person who has been convicted in any court of a  
 2067 felony or of any crime or offense involving moral turpitude, or who has violated the laws of the  
 2068 Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation,  
 2069 possession, use or sale of alcoholic beverages;

2070 i. Subsequent to the granting of his original license, has demonstrated by his police record a lack of  
 2071 respect for law and order;

2072 j. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person  
 2073 whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii)  
 2074 intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter  
 2075 upon such licensed premises;

2076 k. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as  
 2077 provided under this title;

2078 l. Is physically unable to carry on the business conducted under such license or has been adjudicated  
 2079 incapacitated;

2080 m. Has allowed any obscene literature, pictures or materials upon the licensed premises;

2081 n. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises;

2082 o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly  
 2083 allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use  
 2084 marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled  
 2085 paraphernalia as those terms are defined in *Articles 1 (§ 3.2-4122 et seq.) and 7 (§ 3.2-4159 et seq.) of*  
 2086 *Chapter 41.2 of Title 3.2, Articles 1 (§ 18.2-247 et seq.) and 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of*  
 2087 *Title 18.2, and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of*  
 2088 *§ 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Article 7 of Chapter*

41.2 of Title 3.2, Article 1 or 1.1 of Chapter 7 of Title 18.2, or the Drug Control Act. The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business that facilitates the commission of any of the offenses set forth herein;

p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises from becoming a place where patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et seq.), 2.1 (§ 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5 (§ 18.2-58 et seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ 18.2-346 et seq.) or 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to the public safety; or

q. Has failed to take reasonable measures to prevent an act of violence resulting in death or serious bodily injury, or a recurrence of such acts, from occurring on (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that is owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises.

2. The place occupied by the licensee:

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

b. Has been adjudicated a common nuisance under the provisions of this title or § 3.2-4190 or 18.2-258; or

c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panderers or habitual law violators or has become a place where illegal drugs are regularly used or distributed. The Board may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

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

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

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

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

7. Any other cause authorized by this title.

#### **§ 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 (i) of advising the governing body and all boards, departments, agencies, officials, and employees of his county or city; (ii) of drafting or preparing county or city ordinances; (iii) 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; (iv) 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, 3.2-4160, 3.2-4161, 18.2-268.3, 29.1-738.2, or 46.2-341.26:3.

#### **§ 16.1-69.48:1. (Effective until March 1, 2021) Fixed fee for misdemeanors, traffic infractions and other violations in district court; additional fees to be added.**

A. Assessment of the fees provided for in this section shall be based on (i) an appearance for court

2150 hearing in which there has been a finding of guilty; (ii) a written appearance with waiver of court  
 2151 hearing and entry of guilty plea; (iii) for a defendant failing to appear, a trial in his or her absence  
 2152 resulting in a finding of guilty; (iv) an appearance for court hearing in which the court requires that the  
 2153 defendant successfully complete traffic school, a mature driver motor vehicle crash prevention course, or  
 2154 a driver improvement clinic, in lieu of a finding of guilty; (v) a deferral of proceedings pursuant to  
 2155 § 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-251, 19.2-303.2, or 19.2-303.6; or (vi) proof of  
 2156 compliance with law under §§ 46.2-104, 46.2-324, 46.2-613, 46.2-646, 46.2-711, 46.2-715, 46.2-716,  
 2157 46.2-752, 46.2-1000, 46.2-1003, 46.2-1052, 46.2-1053, and 46.2-1158.02.

2158 In addition to any other fee prescribed by this section, a fee of \$35 shall be taxed as costs whenever  
 2159 a defendant fails to appear, unless, after a hearing requested by such person, good cause is shown for  
 2160 such failure to appear. No defendant with multiple charges arising from a single incident shall be taxed  
 2161 the applicable fixed fee provided in subsection B, C, or D more than once for a single appearance or  
 2162 trial in absence related to that incident. However, when a defendant who has multiple charges arising  
 2163 from the same incident and who has been assessed a fixed fee for one of those charges is later  
 2164 convicted of another charge that arises from that same incident and that has a higher fixed fee, he shall  
 2165 be assessed the difference between the fixed fee earlier assessed and the higher fixed fee.

2166 A defendant with charges which arise from separate incidents shall be taxed a fee for each incident  
 2167 even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

2168 In addition to the fixed fees assessed pursuant to this section, in the appropriate cases, the clerk shall  
 2169 also assess any costs otherwise specifically provided by statute.

2170 B. In misdemeanors tried in district court, except for those proceedings provided for in subsection C,  
 2171 there shall be assessed as court costs a fixed fee of \$61. The amount collected, in whole or in part, for  
 2172 the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts  
 2173 designated:

- 2174 1. Processing fee (General Fund)(.573770);
- 2175 2. Virginia Crime Victim-Witness Fund (.049180);
- 2176 3. Regional Criminal Justice Training Academies Fund (.016393);
- 2177 4. Courthouse Construction/Maintenance Fund (.032787);
- 2178 5. Criminal Injuries Compensation Fund (.098361);
- 2179 6. Intensified Drug Enforcement Jurisdiction Fund (.065574);
- 2180 7. Sentencing/supervision fee (General Fund)(.131148); and
- 2181 8. Virginia Sexual and Domestic Violence Victim Fund (.032787).

2182 C. In criminal actions and proceedings in district court for a violation of any provision of *Article 7*  
 2183 (*§ 3.2-4159 et seq.*) of *Chapter 41.2 of Title 3.2* or *Article 1* (*§ 18.2-247 et seq.*) of *Chapter 7* of *Title*  
 2184 *18.2*, there shall be assessed as court costs a fixed fee of \$136. The amount collected, in whole or in  
 2185 part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional  
 2186 amounts designated:

- 2187 1. Processing fee (General Fund)(.257353);
- 2188 2. Virginia Crime Victim-Witness Fund (.022059);
- 2189 3. Regional Criminal Justice Training Academies Fund (.007353);
- 2190 4. Courthouse Construction/Maintenance Fund (.014706);
- 2191 5. Criminal Injuries Compensation Fund (.044118);
- 2192 6. Intensified Drug Enforcement Jurisdiction Fund (.029412);
- 2193 7. Drug Offender Assessment and Treatment Fund (.551471);
- 2194 8. Forensic laboratory fee and sentencing/supervision fee (General Fund)(.058824); and
- 2195 9. Virginia Sexual and Domestic Violence Victim Fund (.014706).

2196 D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of  
 2197 \$51. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by  
 2198 law, to the following funds in the fractional amounts designated:

- 2199 1. Processing fee (General Fund)(.764706);
- 2200 2. Virginia Crime Victim-Witness Fund (.058824);
- 2201 3. Regional Criminal Justice Training Academies Fund (.019608);
- 2202 4. Courthouse Construction/Maintenance Fund (.039216);
- 2203 5. Intensified Drug Enforcement Jurisdiction Fund (.078431); and
- 2204 6. Virginia Sexual and Domestic Violence Victim Fund (.039216).

2205 **§ 16.1-69.48:1. (Effective March 1, 2021) Fixed fee for misdemeanors, traffic infractions and**  
 2206 **other violations in district court; additional fees to be added.**

2207 A. Assessment of the fees provided for in this section shall be based on (i) an appearance for court  
 2208 hearing in which there has been a finding of guilty; (ii) a written appearance with waiver of court  
 2209 hearing and entry of guilty plea; (iii) for a defendant failing to appear, a trial in his or her absence  
 2210 resulting in a finding of guilty; (iv) an appearance for court hearing in which the court requires that the  
 2211 defendant successfully complete traffic school, a mature driver motor vehicle crash prevention course, or

a driver improvement clinic, in lieu of a finding of guilty; (v) a deferral of proceedings pursuant to § 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-251, 19.2-298.02, 19.2-303.2, or 19.2-303.6; or (vi) proof of compliance with law under §§ 46.2-104, 46.2-324, 46.2-613, 46.2-646, 46.2-711, 46.2-715, 46.2-716, 46.2-752, 46.2-1000, 46.2-1003, 46.2-1052, 46.2-1053, and 46.2-1158.02.

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

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

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

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

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

C. In criminal actions and proceedings in district court for a violation of any provision of *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2*, there shall be assessed as court costs a fixed fee of \$136. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

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

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

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

**§ 16.1-69.48:3. Fees charged to drug offenders.**

Whenever in a general district court the costs provided for in subsection C of § 16.1-69.48:1 are assessed for a violation of any provision of *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2*, a portion of the costs, as specified in subsection C of § 16.1-69.48:1, shall be included in the taxed costs and paid into the Drug Offender Assessment and Treatment Fund.

**§ 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

2273 inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than  
2274 accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental  
2275 functions, including, but not limited to, a child who is with his parent or other person responsible for his  
2276 care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled  
2277 substance, or (ii) during the unlawful sale of such substance by that child's parents or other person  
2278 responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would  
2279 constitute a felony violation of § 18.2-248;

2280 2. Whose parents or other person responsible for his care neglects or refuses to provide care  
2281 necessary for his health; however, no child who in good faith is under treatment solely by spiritual  
2282 means through prayer in accordance with the tenets and practices of a recognized church or religious  
2283 denomination shall for that reason alone be considered to be an abused or neglected child;

2284 3. Whose parents or other person responsible for his care abandons such child;

2285 4. Whose parents or other person responsible for his care commits or allows to be committed any  
2286 sexual act upon a child in violation of the law;

2287 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or  
2288 physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco  
2289 parentis;

2290 6. Whose parents or other person responsible for his care creates a substantial risk of physical or  
2291 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as  
2292 defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who  
2293 the parent or other person responsible for his care knows has been convicted of an offense against a  
2294 minor for which registration is required as a Tier III offender pursuant to § 9.1-902; or

2295 7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in  
2296 the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the Justice for Victims  
2297 of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

2298 If a civil proceeding under this chapter is based solely on the parent having left the child at a  
2299 hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely  
2300 delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency  
2301 medical services agency that employs emergency medical services personnel, within 14 days of the  
2302 child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for  
2303 adoption, the court may find such a child is a neglected child upon the ground of abandonment.

2304 "Adoptive home" means the place of residence of any natural person in which a child resides as a  
2305 member of the household and in which he has been placed for the purposes of adoption or in which he  
2306 has been legally adopted by another member of the household.

2307 "Adult" means a person 18 years of age or older.

2308 "Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part  
2309 of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a  
2310 delinquent act that would be a felony if committed by an adult.

2311 "Boot camp" means a short-term secure or nonsecure juvenile residential facility with highly  
2312 structured components including, but not limited to, military style drill and ceremony, physical labor,  
2313 education and rigid discipline, and no less than six months of intensive aftercare.

2314 "Child," "juvenile," or "minor" means a person who is (i) younger than 18 years of age or (ii) for  
2315 purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of  
2316 Title 63.2, less than 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

2317 "Child in need of services" means (i) a child whose behavior, conduct or condition presents or results  
2318 in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14  
2319 whose behavior, conduct or condition presents or results in a serious threat to the well-being and  
2320 physical safety of another person; however, no child who in good faith is under treatment solely by  
2321 spiritual means through prayer in accordance with the tenets and practices of a recognized church or  
2322 religious denomination shall for that reason alone be considered to be a child in need of services, nor  
2323 shall any child who habitually remains away from or habitually deserts or abandons his family as a  
2324 result of what the court or the local child protective services unit determines to be incidents of physical,  
2325 emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

2326 However, to find that a child falls within these provisions, (i) the conduct complained of must  
2327 present a clear and substantial danger to the child's life or health or to the life or health of another  
2328 person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being  
2329 received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or  
2330 services needed by the child or his family.

2331 "Child in need of supervision" means:

2332 1. A child who, while subject to compulsory school attendance, is habitually and without justification  
2333 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of  
2334 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 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~~ *3.2-4160 or 3.2-4161*.

"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

2396 parental supervision.

2397 "Independent living services" means services and activities provided to a child in foster care 14 years  
2398 of age or older and who has been committed or entrusted to a local board of social services, child  
2399 welfare agency, or private child-placing agency. "Independent living services" may also mean services  
2400 and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet  
2401 reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his  
2402 commitment to the Department of Juvenile Justice, was in the custody of a local board of social  
2403 services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was  
2404 committed to the Department of Juvenile Justice immediately prior to placement in an independent  
2405 living arrangement. "Independent living services" includes counseling, education, housing, employment,  
2406 and money management skills development and access to essential documents and other appropriate  
2407 services to help children or persons prepare for self-sufficiency.

2408 "Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this  
2409 chapter.

2410 "Jail" or "other facility designed for the detention of adults" means a local or regional correctional  
2411 facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding  
2412 cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the  
2413 transfer of a child to a juvenile facility.

2414 "The judge" means the judge or the substitute judge of the juvenile and domestic relations district  
2415 court of each county or city.

2416 "This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in  
2417 this chapter.

2418 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to  
2419 have physical custody of the child, to determine and redetermine where and with whom he shall live,  
2420 the right and duty to protect, train and discipline him and to provide him with food, shelter, education  
2421 and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal  
2422 status created by court order of joint custody as defined in § 20-107.2.

2423 "Permanent foster care placement" means the place of residence in which a child resides and in  
2424 which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation  
2425 and agreement between the placing agency and the place of permanent foster care that the child shall  
2426 remain in the placement until he reaches the age of majority unless modified by court order or unless  
2427 removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of  
2428 residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term  
2429 basis.

2430 "Qualified individual" means a trained professional or licensed clinician who is not an employee of  
2431 the local board of social services or licensed child-placing agency that placed the child in a qualified  
2432 residential treatment program and is not affiliated with any placement setting in which children are  
2433 placed by such local board of social services or licensed child-placing agency.

2434 "Qualified residential treatment program" means a program that (i) provides 24-hour residential  
2435 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that  
2436 meets the clinical and other needs of children with serious emotional or behavioral disorders, including  
2437 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this  
2438 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site  
2439 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts  
2440 outreach with the child's family members, including efforts to maintain connections between the child  
2441 and his siblings and other family; documents and maintains records of such outreach efforts; and  
2442 maintains contact information for any known biological family and fictive kin of the child; (v) whenever  
2443 appropriate and in the best interest of the child, facilitates participation by family members in the child's  
2444 treatment program before and after discharge and documents the manner in which such participation is  
2445 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months  
2446 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an  
2447 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that  
2448 any child placed in the program receive an assessment within 30 days of such placement by a qualified  
2449 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,  
2450 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)  
2451 identifies whether the needs of the child can be met through placement with a family member or in a  
2452 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified  
2453 residential treatment program, that would provide the most effective and appropriate level of care for the  
2454 child in the least restrictive environment and be consistent with the short-term and long-term goals  
2455 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and  
2456 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to  
2457 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,



16.1-282.1, or 16.1-282.2.

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

"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.

2519 "Child," "juvenile," or "minor" means a person who is (i) younger than 18 years of age or (ii) for  
2520 purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of  
2521 Title 63.2, less than 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

2522 "Child in need of services" means (i) a child whose behavior, conduct or condition presents or results  
2523 in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14  
2524 whose behavior, conduct or condition presents or results in a serious threat to the well-being and  
2525 physical safety of another person; however, no child who in good faith is under treatment solely by  
2526 spiritual means through prayer in accordance with the tenets and practices of a recognized church or  
2527 religious denomination shall for that reason alone be considered to be a child in need of services, nor  
2528 shall any child who habitually remains away from or habitually deserts or abandons his family as a  
2529 result of what the court or the local child protective services unit determines to be incidents of physical,  
2530 emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

2531 However, to find that a child falls within these provisions, (i) the conduct complained of must  
2532 present a clear and substantial danger to the child's life or health or to the life or health of another  
2533 person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being  
2534 received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or  
2535 services needed by the child or his family.

2536 "Child in need of supervision" means:

2537 1. A child who, while subject to compulsory school attendance, is habitually and without justification  
2538 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of  
2539 any and all educational services and programs that are required to be provided by law and which meet  
2540 the child's particular educational needs, (ii) the school system from which the child is absent or other  
2541 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,  
2542 and (iii) the school system has provided documentation that it has complied with the provisions of  
2543 § 22.1-258; or

2544 2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or  
2545 placement authority, remains away from or deserts or abandons his family or lawful custodian on more  
2546 than one occasion or escapes or remains away without proper authority from a residential care facility in  
2547 which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to  
2548 the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not  
2549 presently being received, and (iii) the intervention of the court is essential to provide the treatment,  
2550 rehabilitation or services needed by the child or his family.

2551 "Child welfare agency" means a child-placing agency, child-caring institution or independent foster  
2552 home as defined in § 63.2-100.

2553 "The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile  
2554 and domestic relations district court of each county or city.

2555 "Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an  
2556 ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of §  
2557 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but does not include an  
2558 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if  
2559 committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, "delinquent act" includes a refusal to  
2560 take a breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city, or town. For  
2561 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"  
2562 includes a violation of ~~§ 18.2-250.1~~ 3.2-4160 or 3.2-4161.

2563 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed  
2564 a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been  
2565 terminated under the provisions of § 16.1-269.6.

2566 "Department" means the Department of Juvenile Justice and "Director" means the administrative head  
2567 in charge thereof or such of his assistants and subordinates as are designated by him to discharge the  
2568 duties imposed upon him under this law.

2569 "Driver's license" means any document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2, or  
2570 the comparable law of another jurisdiction, authorizing the operation of a motor vehicle upon the  
2571 highways.

2572 "Family abuse" means any act involving violence, force, or threat that results in bodily injury or  
2573 places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by  
2574 a person against such person's family or household member. Such act includes, but is not limited to, any  
2575 forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of  
2576 Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable  
2577 apprehension of death, sexual assault, or bodily injury.

2578 "Family or household member" means (i) the person's spouse, whether or not he or she resides in the  
2579 same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same  
2580 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.

2642 "Qualified residential treatment program" means a program that (i) provides 24-hour residential  
2643 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that  
2644 meets the clinical and other needs of children with serious emotional or behavioral disorders, including  
2645 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this  
2646 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site  
2647 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts  
2648 outreach with the child's family members, including efforts to maintain connections between the child  
2649 and his siblings and other family; documents and maintains records of such outreach efforts; and  
2650 maintains contact information for any known biological family and fictive kin of the child; (v) whenever  
2651 appropriate and in the best interest of the child, facilitates participation by family members in the child's  
2652 treatment program before and after discharge and documents the manner in which such participation is  
2653 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months  
2654 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an  
2655 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that  
2656 any child placed in the program receive an assessment within 30 days of such placement by a qualified  
2657 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,  
2658 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)  
2659 identifies whether the needs of the child can be met through placement with a family member or in a  
2660 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified  
2661 residential treatment program, that would provide the most effective and appropriate level of care for the  
2662 child in the least restrictive environment and be consistent with the short-term and long-term goals  
2663 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and  
2664 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to  
2665 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,  
2666 16.1-282.1, or 16.1-282.2.

2667 "Residual parental rights and responsibilities" means all rights and responsibilities remaining with the  
2668 parent after the transfer of legal custody or guardianship of the person, including but not limited to the  
2669 right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility  
2670 for support.

2671 "Secure facility" or "detention home" means a local, regional or state public or private locked  
2672 residential facility that has construction fixtures designed to prevent escape and to restrict the movement  
2673 and activities of children held in lawful custody.

2674 "Shelter care" means the temporary care of children in physically unrestricting facilities.

2675 "State Board" means the State Board of Juvenile Justice.

2676 "Status offender" means a child who commits an act prohibited by law which would not be criminal  
2677 if committed by an adult.

2678 "Status offense" means an act prohibited by law which would not be an offense if committed by an  
2679 adult.

2680 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of  
2681 § 16.1-269.1 when committed by a juvenile 14 years of age or older.

2682 **§ 16.1-260. Intake; petition; investigation.**

2683 A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of  
2684 a petition, except as provided in subsection H and in § 16.1-259. The form and content of the petition  
2685 shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the  
2686 Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests,  
2687 and the processing of petitions to initiate a case shall be the responsibility of the intake officer.  
2688 However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own  
2689 motion with the clerk; (ii) designated nonattorney employees of the Department of Social Services may  
2690 complete, sign, and file petitions and motions relating to the establishment, modification, or enforcement  
2691 of support on forms approved by the Supreme Court of Virginia with the clerk; (iii) designated  
2692 nonattorney employees of a local department of social services may complete, sign, and file with the  
2693 clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions  
2694 for permanency planning hearings, petitions to establish paternity, motions to establish or modify  
2695 support, motions to amend or review an order, and motions for a rule to show cause; and (iv) any  
2696 attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject  
2697 of the petition is a child alleged to be in need of services, in need of supervision, or delinquent.  
2698 Complaints alleging abuse or neglect of a child shall be referred initially to the local department of  
2699 social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.  
2700 Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake  
2701 officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is  
2702 receiving child support services or public assistance. No individual who is receiving support services or  
2703 public assistance shall be denied the right to file a petition or motion to establish, modify, or enforce an

order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision, or delinquent only if the juvenile (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 4 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2;

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

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

9. Robbery pursuant to § 18.2-58;

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

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

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

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

14. A threat pursuant to § 18.2-60.

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

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

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

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

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

3. In the case of a misdemeanor violation of § 18.2-266, 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~~ 3.2-4160 or 3.2-4161, 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 § ~~3.2-4160, 3.2-4161, or 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 § ~~3.2-4160, 3.2-4161, or 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, (b) a violation under *Article 7* (§ ~~3.2-4159 et seq.~~) of *Chapter 41.2 of Title 3.2* or *Article 1* (§ 18.2-247 et seq.) or *Article 1.1* (§ 18.2-265.1 et seq.) of *Chapter 7 of Title 18.2* 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~~ 3.2-4160 or 3.2-4161, 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.

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

Whenever any juvenile who has not previously been found delinquent of any offense under *Article 7* (§ 3.2-4159 *et seq.*) of Chapter 41.2 of Title 3.2 or Article 1 (§ 18.2-247 *et seq.*) of Chapter 7 of Title 18.2 or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant or hallucinogenic drugs, or has not previously had a proceeding against him for a violation of such an offense dismissed as provided in *this section* or § 18.2-251, is found delinquent of any offense concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances, the juvenile court or the circuit court shall require such juvenile to undergo a substance abuse screening pursuant to § 16.1-273 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by a court services unit of the Department of Juvenile Justice, or by a locally operated court services unit or by personnel of any program or agency approved by the Department. The cost of such testing ordered by the court shall be paid by the Commonwealth from funds appropriated to the Department for this purpose. The court shall also order the juvenile to undergo such treatment or education program for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Behavioral Health and Developmental Services or by a similar program available through a facility or program operated by or under contract to the Department of Juvenile Justice or a locally operated court services unit or a program funded through the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 *et seq.*).

**§ 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~~ *that* 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 § 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4170, 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

3011 under § 16.1-278.8.

3012 **§ 16.1-309.1. Exception as to confidentiality.**

3013 A. Notwithstanding any other provision of this article, where consideration of public interest requires,  
3014 the judge shall make available to the public the name and address of a juvenile and the nature of the  
3015 offense for which a juvenile has been adjudicated delinquent (i) for an act which would be a Class 1, 2,  
3016 or 3 felony, forcible rape, robbery or burglary or a related offense as set out in Article 2 (§ 18.2-89 et  
3017 seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is  
3018 sentenced as an adult in circuit court.

3019 B. 1. a. At any time prior to disposition, if a juvenile charged with a delinquent act which would  
3020 constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in  
3021 a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the  
3022 Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a  
3023 locally operated court services unit, may, with notice to the juvenile's attorney of record, petition the  
3024 court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical  
3025 description and photograph, the charge for which he is sought or for which he was adjudicated and any  
3026 other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive  
3027 and for good cause, the court shall order release of this information to the public. If a juvenile charged  
3028 with a delinquent act that would constitute a felony if committed by an adult, or held in custody by a  
3029 law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from  
3030 justice at a time when the court is not in session, the Commonwealth's attorney, the Department of  
3031 Juvenile Justice, or a locally operated court services unit may, with notice to the juvenile's attorney of  
3032 record, authorize the public release of the juvenile's name, age, physical description and photograph, the  
3033 charge for which he is sought, and any other information which may expedite his apprehension.

3034 b. At any time prior to disposition, if a juvenile charged with a delinquent act which would  
3035 constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or  
3036 held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the  
3037 Commonwealth may, with notice to the juvenile's attorney of record, petition the court having  
3038 jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description  
3039 and photograph, the charge for which he is sought or for which he was adjudicated and any other  
3040 information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for  
3041 good cause, the court shall order release of this information to the public. If a juvenile charged with a  
3042 delinquent act that would constitute a misdemeanor if committed by an adult, or held in custody by a  
3043 law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from  
3044 justice at a time when the court is not in session, the attorney for the Commonwealth may, with notice  
3045 to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical  
3046 description and photograph, the charge for which he is sought, and any other information which may  
3047 expedite his apprehension.

3048 2. After final disposition, if a juvenile (i) found to have committed a delinquent act becomes a  
3049 fugitive from justice or (ii) who has been committed to the Department of Juvenile Justice pursuant to  
3050 subdivision A 14 of § 16.1-278.8 or § 16.1-285.1 becomes a fugitive from justice by escaping from a  
3051 facility operated by or under contract with the Department or from the custody of any employee of such  
3052 facility, the Department may release to the public the juvenile's name, age, physical description and  
3053 photograph, the charge for which he is sought or for which he was committed, and any other  
3054 information which may expedite his apprehension. The Department shall promptly notify the attorney for  
3055 the Commonwealth of the jurisdiction in which the juvenile was tried whenever information is released  
3056 pursuant to this subdivision. If a juvenile specified in clause (i) being held after disposition in a secure  
3057 facility not operated by or under contract with the Department becomes a fugitive by such escape, the  
3058 attorney for the Commonwealth of the locality in which the facility is located may release the  
3059 information as provided in this subdivision.

3060 C. Whenever a juvenile 14 years of age or older is charged with a delinquent act that would be a  
3061 criminal violation of Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2, a felony involving a  
3062 weapon, *a felony violation of Article 7 (§ 3.2-4159 et. seq.) of Chapter 41.2 of Title 3.2*, a felony  
3063 violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an "act of violence" as defined  
3064 in subsection A of § 19.2-297.1 if committed by an adult, the judge may, where consideration of the  
3065 public interest requires, make the juvenile's name and address available to the public.

3066 D. Upon the request of a victim of a delinquent act that would be a felony or that would be a  
3067 misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-57.2, 18.2-60.3, 18.2-60.4, 18.2-67.4, or 18.2-67.5  
3068 if committed by an adult, the court may order that such victim be informed of the charge or charges  
3069 brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim"  
3070 shall be defined as in § 19.2-11.01.

3071 E. Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant  
3072 to § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been

terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

F. Notwithstanding any other provision of law, a copy of any court order that imposes a curfew or other restriction on a juvenile may be provided to the chief law-enforcement officer of the county or city wherein the juvenile resides. The chief law-enforcement officer shall only disclose information contained in the court order to other law-enforcement officers in the conduct of official duties.

G. Notwithstanding any other provision of law, where consideration of public safety requires, the Department and locally operated court service unit shall release information relating to a juvenile's criminal street gang involvement, if any, and the criminal street gang-related activity and membership of others, as criminal street gang is defined in § 18.2-46.1, obtained from an investigation or supervision of a juvenile and shall include the identity or identifying information of the juvenile; however, the Department and local court service unit shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. Such information shall be released to any State Police, local police department, sheriff's office, or law-enforcement task force that is a part of or administered by the Commonwealth or any political subdivision thereof, and that is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth. The exchange of information shall be for the purpose of an investigation into criminal street gang activity.

H. Notwithstanding any other provision of Article 12 (§ 16.1-299 et seq.), a clerk of the court shall report to the Bureau of Immigration and Customs Enforcement of the U.S. Department of Homeland Security a juvenile who has been detained in a secure facility but only upon an adjudication of delinquency or finding of guilt for a violent juvenile felony and when there is evidence that the juvenile is in the United States illegally.

**§ 17.1-275. Fees collected by clerks of circuit courts; generally.**

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, \$18 for an instrument or document consisting of 10 or fewer pages or sheets; \$32 for an instrument or document consisting of 11 to 30 pages or sheets; and \$52 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of \$17 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. Three dollars and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, \$20 for estates not exceeding \$50,000, \$25 for estates not exceeding \$100,000 and \$30 for estates exceeding \$100,000. No fee shall be charged for estates of \$5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, \$10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, \$10. For recording an order to celebrate the rites of marriage pursuant to § 20-25, \$25 to be paid by the petitioner.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, \$3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be \$15 in cases not exceeding \$500 and \$25 in all other cases.

8. For making out a copy of any paper, record, or electronic record to go out of the office, which is not otherwise specifically provided for herein, a fee of \$0.50 for each page or, if an electronic record, each image. From such fees, the clerk shall reimburse the locality the costs of making out the copies and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing body shall budget and appropriate such funds to be used to support the cost of copies pursuant to this subdivision. For purposes of this section, the costs of making out the copies authorized under this section shall include costs included in the lease and maintenance agreements for the equipment and the technology needed to operate electronic systems in the clerk's office used to make out the copies, but

shall not include salaries or related benefits. The costs of copies shall otherwise be determined in accordance with § 2.2-3704. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge \$2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional \$0.50.

10. In any case in which a person is convicted of a violation of any provision of *Article 7* (§ 3.2-4159 *et seq.*) of *Chapter 41.2 of Title 3.2* or *Article 1* (§ 18.2-247 *et seq.*) of *Chapter 7 of Title 18.2* or is subject to a disposition under § 18.2-251, the clerk shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251, which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund *as established in § 18.2-251.02*.

11. In any case in which a person is convicted of a violation of any provision of *Article 7* (§ 3.2-4159 *et seq.*) of *Chapter 41.2 of Title 3.2* or *Article 1* (§ 18.2-247 *et seq.*) of *Chapter 7 of Title 18.2* or is subject to a disposition under § 18.2-251, the clerk shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251, which shall be taxed as costs to the defendant and shall be paid *as provided in § 17.1-275.8* into the Drug Offender Assessment and Treatment Fund *as provided in § 17.1-275.8 established in § 18.2-251.02*.

12. Upon the defendant's being required to successfully complete traffic school, a mature driver motor vehicle crash prevention course, or a driver improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as if he had been convicted.

13. In all civil actions that include one or more claims for the award of monetary damages the clerk's fee chargeable to the plaintiff shall be \$100 in cases seeking recovery not exceeding \$49,999; \$200 in cases seeking recovery exceeding \$49,999, but not exceeding \$100,000; \$250 in cases seeking recovery exceeding \$100,000, but not exceeding \$500,000; and \$300 in cases seeking recovery exceeding \$500,000. Ten dollars of each such fee shall be apportioned to the Courts Technology Fund established under § 17.1-132. A fee of \$25 shall be paid by the plaintiff at the time of instituting a condemnation case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

13a. For the filing of any petition seeking court approval of a settlement where no action has yet been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the time of filing the petition.

14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering judgment, \$12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as prescribed in subdivision A 17.

15. For qualifying notaries public, including the making out of the bond and any copies thereof, administering the necessary oaths, and entering the order, \$10.

16. For each habeas corpus proceeding, the clerk shall receive \$10 for all services required thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

17. For docketing and indexing a judgment from any other court of the Commonwealth, for docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment pursuant to § 8.01-452, a fee of \$5; and for issuing an abstract of any recorded judgment, when proper to do so, a fee of \$5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee of \$20.

18. For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the entry of a decree of divorce from the bond of matrimony.

19, 20. [Repealed.]

21. For making the endorsements on a forthcoming bond and recording the matters relating to such bond pursuant to the provisions of § 8.01-529, \$1.

22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, \$10.

23. For preparation and issuance of a subpoena duces tecum, \$5.

24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name, \$20; however, this subdivision shall not be applicable in cases where the change of name is incident to

a divorce.

25. For providing court records or documents on microfilm, per frame, \$0.50.

26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be \$60, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132 to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged for (i) the filing of a cross-claim or setoff in any pending suit or (ii) the filing of a counterclaim or any other responsive pleading in any annulment, divorce, or separate maintenance proceeding. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit or debit cards in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect from the person presenting such credit or debit card a reasonable convenience fee for the processing of such credit or debit card. Such convenience fee shall not exceed four percent of the amount paid for the transaction or a flat fee of \$2 per transaction. The clerk may set a lower convenience fee for electronic filing of civil or criminal proceedings pursuant to § 17.1-258.3. Nothing herein shall be construed to prohibit the clerk from outsourcing the processing of credit and debit card transactions to a third-party private vendor engaged by the clerk. Convenience fees shall be used to cover operational expenses as defined in § 17.1-295.

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit or debit card issuer that payment will not be made for any reason, the clerk may collect a fee of \$50 or 10 percent of the amount of the payment, whichever is greater.

29. For all services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, or 17.1-275.4, in an adoption proceeding, a fee of \$20, in addition to the fee imposed under § 63.2-1246, to be paid by the petitioner or petitioners. For each petition for adoption filed pursuant to § 63.2-1201, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, an additional \$50 filing fee as required under § 63.2-1201 shall be deposited in the Virginia Birth Father Registry Fund pursuant to § 63.2-1249.

30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ 33.2-1023, 33.2-1024, and 33.2-1027, a fee of \$5 to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.2-1021, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or 17.1-275.9, a fee of \$20.

33. [Repealed.]

34. For filings, etc., under the Uniform Federal Lien Registration Act (§ 55.1-653 et seq.), the fees shall be as prescribed in that Act.

35. For filing the appointment of a resident agent for a nonresident property owner in accordance with § 55.1-1211 or 55.1-1401, a fee of \$10.

36. [Repealed.]

37. For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of \$10.

38. For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

39. For lodging, indexing and preserving a will in accordance with § 64.2-409, a fee of \$5.

40. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed under § 8.9A-525.

41. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed under § 8.9A-525.

42. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as prescribed under § 8.9A-525.

43. For filing a petition as provided in §§ 64.2-2001 and 64.2-2013, the fee shall be \$10.

44. For issuing any execution, and recording the return thereof, a fee of \$1.50.

3257 45. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee  
 3258 of \$5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an  
 3259 additional fee of \$1.50, in accordance with subdivision A 44.

3260 B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A  
 3261 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for courthouse construction,  
 3262 renovation or maintenance.

3263 C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A  
 3264 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for services provided for the  
 3265 poor, without charge, by a nonprofit legal aid program.

3266 D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A  
 3267 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for public law libraries.

3268 E. All fees collected pursuant to subdivision A 27 and § 17.1-276 shall be deposited by the clerk  
 3269 into a special revenue fund held by the clerk, which will restrict the funds to their statutory purpose.

3270 F. The provisions of this section shall control the fees charged by clerks of circuit courts for the  
 3271 services above described.

3272 **§ 17.1-275.8. Fixed drug misdemeanor fee.**

3273 In circuit court, upon conviction of any and each misdemeanor charge, whether or not originally  
 3274 charged as a felony, for a violation of any provision of *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of*  
 3275 *Title 3.2 or Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2*, or upon a deferred disposition of  
 3276 proceedings in the case of any and each misdemeanor charge, whether or not originally charged as a  
 3277 felony, deferred pursuant to the terms and conditions of § 18.2-251, there shall be assessed as court  
 3278 costs a fee of \$296.50, to be known as the fixed drug misdemeanor fee. This fee shall be in addition to  
 3279 any fee assessed in the district court.

3280 The amount collected, in whole or in part, for the fixed drug misdemeanor fee shall be apportioned,  
 3281 as provided by law, to the following funds in the fractional amounts designated:

- 3282 1. Sentencing/supervision fee (General Fund) (.1264755);
- 3283 2. Court Reporter Fund (.0168634);
- 3284 3. Witness expenses/expert witness fee (General Fund) (.0067454);
- 3285 4. Virginia Crime Victim-Witness Fund (.0101180);
- 3286 5. Intensified Drug Enforcement Jurisdiction Fund (.0134907);
- 3287 6. Criminal Injuries Compensation Fund (.0674536);
- 3288 7. Commonwealth's Attorney Fund (state share) (.0252951);
- 3289 8. Commonwealth's Attorney Fund (local share) (.0252951);
- 3290 9. Regional Criminal Justice Academy Training Fund (.0033727);
- 3291 10. Warrant fee, as prescribed by § 17.1-272 (.0404722);
- 3292 11. Courthouse Construction/Maintenance Fund (.0067454);
- 3293 12. Clerk of the circuit court (.0674536);
- 3294 13. Forensic laboratory fee (General Fund) (.3372681); and
- 3295 14. Drug Offender Assessment and Treatment Fund (.2529511).

3296 **§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.**

3297 A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which  
 3298 shall become effective on January 1, 1995. The initial recommended sentencing range for each felony  
 3299 offense shall be determined first, by computing the actual time-served distribution for similarly situated  
 3300 offenders, in terms of their conviction offense and prior criminal history, released from incarceration  
 3301 during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by  
 3302 eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended  
 3303 sentencing range shall be the median time served for the middle two quartiles and subject to the  
 3304 following additional enhancements:

3305 1. The midpoint of the initial recommended sentencing range for first degree murder, second degree  
 3306 murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual  
 3307 battery shall be further increased by (i) 125 percent in cases in which the defendant has no previous  
 3308 conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously  
 3309 been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years;  
 3310 or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony  
 3311 offense punishable by a maximum punishment of 40 years or more, except that the recommended  
 3312 sentence for a defendant convicted of first degree murder who has previously been convicted of a  
 3313 violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be  
 3314 imprisonment for life;

3315 2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery,  
 3316 aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory  
 3317 burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any  
 3318 statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100



percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than 40 years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving, or distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more; and

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

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

C. For purposes of this chapter, violent felony offenses shall include any felony violation of § 3.2-417.4, 16.1-253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, or 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or 18.2-41; any violation of clause (c) (i) or (ii) of subsection B of § 18.2-46.3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation of § 18.2-48, 18.2-48.1, or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, or 18.2-55; any violation of subsection B of § 18.2-57; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or 18.2-58.1; any felony violation of § 18.2-60.1, 18.2-60.3, or 18.2-60.4; any violation of § 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, former § 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-67.4:1; any violation of subsection A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of § 18.2-85, 18.2-89, 18.2-90, 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any felony violation of subsection A or B of § 18.2-280; any violation of § 18.2-281; any felony violation of subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation of § 18.2-286.1, 18.2-287.2, 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any felony violation of subsection C of § 18.2-308.1 or § 18.2-308.2; any violation of § 18.2-308.2:1 or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of former § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of § 18.2-368, 18.2-370, or 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second or subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; any felony violation of § 18.2-460, 18.2-474.1, or 18.2-477.1; any violation of § 18.2-477, 18.2-478, 18.2-480, 18.2-481, or 18.2-485; any violation of § 37.2-917; any violation of § 52-48; any violation of § 53.1-203; any conspiracy or attempt to commit any offense specified in this subsection, or any substantially similar offense under the laws of any state, the District of Columbia, or the United States or its territories.

#### **§ 18.2-46.1. Definitions.**

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

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

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of,

3380 attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least  
3381 one of which is an act of violence, provided such acts were not part of a common act or transaction.

3382 "Predicate criminal act" means (i) an act of violence; (ii) any violation of § 3.2-4168, 3.2-4172,  
3383 3.2-4173, 3.2-4175, 18.2-31, 18.2-42, 18.2-46.3, 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.6,  
3384 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-55, 18.2-56.1, 18.2-57, 18.2-57.2, 18.2-59, 18.2-83, 18.2-89,  
3385 18.2-90, 18.2-95, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147,  
3386 18.2-248.01, 18.2-248.03, 18.2-255, 18.2-255.2, 18.2-279, 18.2-282.1, 18.2-286.1, 18.2-287.4, 18.2-289,  
3387 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-308.4, 18.2-355, 18.2-356, 18.2-357, or  
3388 18.2-357.1; (iii) a felony violation of § 18.2-60.3, 18.2-346, 18.2-348, or 18.2-349; (iv) a felony  
3389 violation of § 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4170, or 18.2-248 or of 18.2-248.1 or a conspiracy to  
3390 commit a felony violation of § 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4170, or 18.2-248 or 18.2-248.1; (v)  
3391 any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (vi) any substantially similar  
3392 offense under the laws of another state or territory of the United States, the District of Columbia, or the  
3393 United States.

3394 § 18.2-247. Use of terms "controlled substances," "Schedules I, II, III, IV, V and VI,"  
3395 "imitation controlled substance" and "counterfeit controlled substance" in Title 18.2.

3396 A. Wherever the terms "controlled substances" and "Schedules I, II, III, IV, V and VI" are used in  
3397 Title 18.2, such terms refer to those terms as they are used or defined in the Drug Control Act  
3398 (§ 54.1-3400 et seq.).

3399 B. The term "imitation controlled substance" when used in this article means (i) a counterfeit  
3400 controlled substance or (ii) a pill, capsule, tablet, or substance in any form whatsoever which is not a  
3401 controlled substance subject to abuse, and:

3402 1. Which by overall dosage unit appearance, including color, shape, size, marking and packaging or  
3403 by representations made, would cause the likelihood that such a pill, capsule, tablet, or substance in any  
3404 other form whatsoever will be mistaken for a controlled substance unless such substance was introduced  
3405 into commerce prior to the initial introduction into commerce of the controlled substance which it is  
3406 alleged to imitate; or

3407 2. Which by express or implied representations purports to act like a controlled substance as a  
3408 stimulant or depressant of the central nervous system and which is not commonly used or recognized for  
3409 use in that particular formulation for any purpose other than for such stimulant or depressant effect,  
3410 unless marketed, promoted, or sold as permitted by the U.S. Food and Drug Administration.

3411 C. In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an  
3412 "imitation controlled substance," there shall be considered, in addition to all other relevant factors,  
3413 comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal  
3414 purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the  
3415 packaging of the drug and its appearance in overall finished dosage form, promotional materials or  
3416 representations, oral or written, concerning the drug, and the methods of distribution of the drug and  
3417 where and how it is sold to the public.

3418 D. The term "marijuana" when used in this article means any part of a plant of the genus *Cannabis*,  
3419 whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture,  
3420 or preparation of such plant, its seeds, its resin, or any extract containing one or more cannabinoids.  
3421 Marijuana does not include the mature stalks of such plant, fiber produced from such stalk, oil or cake  
3422 made from the seed of such plant, unless such stalks, fiber, oil or cake is combined with other parts of  
3423 plants of the genus *Cannabis*. Marijuana does not include (i) industrial hemp, as defined in § 3.2-4112,  
3424 that is possessed by a person registered pursuant to subsection A of § 3.2-4115 or his agent or (ii) a  
3425 hemp product, as defined in § 3.2-4112, containing a tetrahydrocannabinol concentration of no greater  
3426 than 0.3 percent that is derived from industrial hemp, as defined in § 3.2-4112, that is grown, dealt, or  
3427 processed in compliance with state or federal law.

3428 E. The term *For purposes of this section*, "counterfeit controlled substance" means a controlled  
3429 substance that, without authorization, bears, is packaged in a container or wrapper that bears, or is  
3430 otherwise labeled to bear, the trademark, trade name, or other identifying mark, imprint or device or any  
3431 likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the manufacturer,  
3432 processor, packer, or distributor who did in fact so manufacture, process, pack or distribute such drug.

3433 F. The Department of Forensic Science shall determine the proper methods for detecting the  
3434 concentration of delta-9-tetrahydrocannabinol (THC) in substances for the purposes of this title and  
3435 §§ 54.1-3401 and 54.1-3446. The testing methodology shall use post-decarboxylation testing or other  
3436 equivalent method and shall consider the potential conversion of delta-9-tetrahydrocannabinol acid  
3437 (THC-A) into THC. The test result shall include the total available THC derived from the sum of the  
3438 THC and THC-A content.

3439 § 18.2-248. Manufacturing, selling, giving, distributing, or possessing with intent to  
3440 manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance  
3441 prohibited; penalties.

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

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

C. Except as provided in subsection C1, any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than 40 years and fined not more than \$500,000. Upon a second conviction of such a violation, and it is alleged in the warrant, indictment, or information that the person has been before convicted of such an offense or of a substantially similar offense in any other jurisdiction, which offense would be a felony if committed in the Commonwealth, and such prior conviction occurred before the date of the offense alleged in the warrant, indictment, or information, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence, and he shall be fined not more than \$500,000.

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment, or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than 10 years, 10 years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence, and he shall be fined not more than \$500,000.

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

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

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

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

3503 C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its  
3504 salts, isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a  
3505 detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction,  
3506 be imprisoned for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a  
3507 second conviction of such a violation, any such person may, in the discretion of the court or jury  
3508 imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years,  
3509 and be fined not more than \$500,000. When a person is convicted of a third or subsequent offense  
3510 under this subsection and it is alleged in the warrant, indictment, or information that he has been  
3511 previously convicted of two or more such offenses or of substantially similar offenses in any other  
3512 jurisdiction, which offenses would be felonies if committed in the Commonwealth and such prior  
3513 convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he  
3514 shall be sentenced to imprisonment for life or for a period not less than 10 years, three years of which  
3515 shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence  
3516 and he shall be fined not more than \$500,000.

3517 Upon conviction, in addition to any other punishment, a person found guilty of this offense shall be  
3518 ordered by the court to make restitution, as the court deems appropriate, to any innocent property owner  
3519 whose property is damaged, destroyed, or otherwise rendered unusable as a result of such  
3520 methamphetamine production. This restitution shall include the person's or his estate's estimated or actual  
3521 expenses associated with cleanup, removal, or repair of the affected property. If the property that is  
3522 damaged, destroyed, or otherwise rendered unusable as a result of such methamphetamine production is  
3523 property owned in whole or in part by the person convicted, the court shall order the person to pay to  
3524 the Methamphetamine Cleanup Fund authorized in § 18.2-248.04 the reasonable estimated or actual  
3525 expenses associated with cleanup, removal, or repair of the affected property or, if actual or estimated  
3526 expenses cannot be determined, the sum of \$10,000. The convicted person shall also pay the cost of  
3527 certifying that any building that is cleaned up or repaired pursuant to this section is safe for human  
3528 occupancy according to the guidelines established pursuant to § 32.1-11.7.

3529 D. If such person proves that he gave, distributed or possessed with intent to give or distribute a  
3530 controlled substance classified in Schedule I or II only as an accommodation to another individual who  
3531 is not an inmate in a community correctional facility, local correctional facility or state correctional  
3532 facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit  
3533 thereby from any consideration received or expected nor to induce the recipient or intended recipient of  
3534 the controlled substance to use or become addicted to or dependent upon such controlled substance, he  
3535 shall be is guilty of a Class 5 felony.

3536 E. If the violation of the provisions of this article consists of the filling by a pharmacist of the  
3537 prescription of a person authorized under this article to issue the same, which prescription has not been  
3538 received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact  
3539 received by the pharmacist within one week of the time of filling the same, or if such violation consists  
3540 of a request by such authorized person for the filling by a pharmacist of a prescription which has not  
3541 been received in writing by the pharmacist and such prescription is, in fact, written at the time of such  
3542 request and delivered to the pharmacist within one week thereof, either such offense shall constitute a  
3543 Class 4 misdemeanor.

3544 E1. Any person who violates this section with respect to a controlled substance classified in Schedule  
3545 III except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, shall  
3546 be is guilty of a Class 5 felony.

3547 E2. Any person who violates this section with respect to a controlled substance classified in Schedule  
3548 IV shall be is guilty of a Class 6 felony.

3549 E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute  
3550 a controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in  
3551 Schedule III, constituting a violation of § 18.2-248.5, only as an accommodation to another individual  
3552 who is not an inmate in a community correctional facility, local correctional facility or state correctional  
3553 facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with the intent to profit  
3554 thereby from any consideration received or expected nor to induce the recipient or intended recipient of  
3555 the controlled substance to use or become addicted to or dependent upon such controlled substance, is  
3556 guilty of a Class 1 misdemeanor.

3557 F. Any person who violates this section with respect to a controlled substance classified in Schedule  
3558 V or Schedule VI or an imitation controlled substance which that imitates a controlled substance  
3559 classified in Schedule V or Schedule VI, shall be is guilty of a Class 1 misdemeanor.

3560 G. Any person who violates this section with respect to an imitation controlled substance which that  
3561 imitates a controlled substance classified in Schedule I, II, III, or IV shall be is guilty of a Class 6  
3562 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this  
3563 subsection that the defendant believed the imitation controlled substance to actually be a controlled  
3564 substance.

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

1. 1.0 kilograms ~~kilogram~~ or more of a mixture or substance containing a detectable amount of heroin;

2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:

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

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

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

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

3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 ~~which~~ *that* contains cocaine base; *or*

4. 100 kilograms ~~or more of a mixture or substance containing a detectable amount of marijuana; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

3626 distribute, or possess with the intent to manufacture, sell, give, or distribute the following during any  
 3627 12-month period of its existence:

- 3628 1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;
- 3629 2. At least 10 kilograms of a mixture or substance containing a detectable amount of:
- 3630 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
- 3631 derivatives of ecgonine or their salts have been removed;
- 3632 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- 3633 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
- 3634 d. Any compound, mixture, or preparation ~~which~~ *that* contains any quantity of any of the substances
- 3635 referred to in subdivisions a through c;

3636 3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 ~~which~~ *that* contains

3637 cocaine base; *or*

3638 4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; *or*

3639 5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0  
 3640 kilograms ~~kilogram~~ of a mixture or substance containing a detectable amount of methamphetamine, its  
 3641 salts, isomers, or salts of its isomers ~~shall be~~ *is* guilty of a felony punishable by a fine of not more than  
 3642 \$1 million and imprisonment for life, which shall be served with no suspension in whole or in part.  
 3643 Such punishment shall be made to run consecutively with any other sentence. However, the court may  
 3644 impose a mandatory minimum sentence of 40 years if the court finds that the defendant substantially  
 3645 cooperated with law-enforcement authorities.

3646 I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he  
 3647 violates any provision of this section; the punishment for which is a felony and either (ii) such violation  
 3648 is a part of a continuing series of violations of this section which are undertaken by such person in  
 3649 concert with five or more other persons with respect to whom such person occupies a position of  
 3650 organizer, a supervisory position, or any other position of management, and from which such person  
 3651 obtains substantial income or resources or (iii) such violation is committed; with respect to  
 3652 methamphetamine or other controlled substance classified in Schedule I or II; for the benefit of, at the  
 3653 direction of, or in association with any criminal street gang as defined in § 18.2-46.1.

3654 J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any  
 3655 two or more different substances listed below with the intent to manufacture methamphetamine,  
 3656 methcathinone, or amphetamine is guilty of a Class 6 felony: liquefied ammonia gas, ammonium nitrate,  
 3657 ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture  
 3658 of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium,  
 3659 sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium  
 3660 permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or  
 3661 2-propanone.

3662 K. The term "methamphetamine precursor drug," when used in this article, means a drug or product  
 3663 containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or  
 3664 salts of optical isomers.

#### 3665 **§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.**

3666 Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person to  
 3667 transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of  
 3668 cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II  
 3669 of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance ~~or five~~  
 3670 ~~or more pounds of marijuana~~. A violation of this section shall constitute a separate and distinct felony.  
 3671 Upon conviction, the person shall be sentenced to not less than five years nor more than 40 years  
 3672 imprisonment, three years of which shall be a mandatory minimum term of imprisonment, and a fine not  
 3673 to exceed ~~\$1,000,000~~ *\$1 million*. A second or subsequent conviction hereunder shall be punishable by a  
 3674 mandatory minimum term of imprisonment of 10 years, which shall be served consecutively with any  
 3675 other sentence.

#### 3676 **§ 18.2-251. Persons charged with first offense may be placed on probation; conditions;** 3677 **substance abuse screening, assessment treatment and education programs or services; drug tests;** 3678 **costs and fees; violations; discharge.**

3679 Whenever any person who has not previously been convicted of any criminal offense under this  
 3680 article or under any statute of the United States or of any state relating to narcotic drugs, ~~marijuana~~, or  
 3681 stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for  
 3682 violation of such an offense dismissed as provided in this section, or pleads guilty to or enters a plea of  
 3683 not guilty to possession of a controlled substance under § 18.2-250, the court, upon such plea if the facts  
 3684 found by the court would justify a finding of guilt, without entering a judgment of guilt and with the  
 3685 consent of the accused, may defer further proceedings and place him on probation upon terms and  
 3686 conditions. If the court defers further proceedings, at that time the court shall determine whether the  
 3687 clerk of court has been provided with the fingerprint identification information or fingerprints of the

person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.

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

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

As a condition of probation, the court shall require the accused (a) to successfully complete treatment or education program or services, (b) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

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

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of § 22.1-315. The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

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

There is hereby established in the state treasury the Drug Offender Assessment and Treatment Fund, which shall consist of moneys received from (i) fees imposed on certain drug offense convictions pursuant to § 16.1-69.48:3 and subdivisions A 10 and 11 of § 17.1-275 and (ii) civil penalties imposed for violations of ~~§ 18.2-250.1~~ §§ 3.2-4160, 3.2-4161, 3.2-4163, 3.2-4167, and 3.2-4177. All interest derived from the deposit and investment of moneys in the Fund shall be credited to the Fund. Any moneys not appropriated by the General Assembly shall remain in the Drug Offender Assessment and Treatment Fund and shall not be transferred or revert to the general fund at the end of any fiscal year. All moneys in the Fund shall be subject to annual appropriation by the General Assembly to the Department of Corrections, the Department of Juvenile Justice, and the Commission on VASAP to implement and operate the offender substance abuse screening and assessment program; the Department of Criminal Justice Services for the support of community-based probation and local pretrial services agencies; and the Office of the Executive Secretary of the Supreme Court of Virginia for the support of drug treatment court programs.

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

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

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

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

2. Such individual remains at the scene of the overdose or at any alternative location to which he or

3749 the person requiring emergency medical attention has been transported until a law-enforcement officer  
3750 responds to the report of an overdose. If no law-enforcement officer is present at the scene of the  
3751 overdose or at the alternative location, then such individual shall cooperate with law enforcement as  
3752 otherwise set forth herein;

3753 3. Such individual identifies himself to the law-enforcement officer who responds to the report of the  
3754 overdose; and

3755 4. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a  
3756 result of the individual seeking or obtaining emergency medical attention.

3757 C. The provisions of this section shall not apply to any person who seeks or obtains emergency  
3758 medical attention for himself or another individual, or to a person experiencing an overdose when  
3759 another individual seeks or obtains emergency medical attention for him, during the execution of a  
3760 search warrant or during the conduct of a lawful search or a lawful arrest.

3761 D. This section does not establish protection from arrest or prosecution for any individual or offense  
3762 other than those listed in subsection B.

3763 E. No law-enforcement officer acting in good faith shall be found liable for false arrest if it is later  
3764 determined that the person arrested was immune from prosecution under this section.

3765 **§ 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing,**  
3766 **and treatment or education.**

3767 The trial judge or court trying the case of any person found guilty of a criminal violation of any law  
3768 concerning the use, in any manner, of drugs, controlled substances, narcotics, ~~marijuana~~, noxious  
3769 chemical substances and like substances shall condition any suspended sentence by first requiring such  
3770 person to agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such  
3771 periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing  
3772 shall be conducted by the supervising probation agency or by personnel of any program or agency  
3773 approved by the supervising probation agency. The cost of such testing ordered by the court shall be  
3774 paid by the Commonwealth and taxed as a part of the costs of such proceedings. The judge or court  
3775 shall order the person, as a condition of any suspended sentence, to undergo such treatment or education  
3776 for substance abuse, if available, as the judge or court deems appropriate based upon consideration of  
3777 the substance abuse assessment. The treatment or education shall be provided by a program or agency  
3778 licensed by the Department of Behavioral Health and Developmental Services, by a similar program or  
3779 services available through the Department of Corrections if the court imposes a sentence of one year or  
3780 more or, if the court imposes a sentence of 12 months or less, by a similar program or services available  
3781 through a local or regional jail, a local community-based probation services agency established pursuant  
3782 to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

3783 **§ 18.2-254. Commitment of convicted person for treatment for substance abuse.**

3784 A. Whenever any person who has not previously been convicted of any criminal offense under this  
3785 article or under any statute of the United States or of any state relating to narcotic drugs, ~~marijuana~~,  
3786 stimulant, depressant, or hallucinogenic drugs or has not previously had a proceeding against him for  
3787 violation of such an offense dismissed as provided in § 18.2-251 is found guilty of violating any law  
3788 concerning the use, in any manner, of drugs, controlled substances, narcotics, ~~marijuana~~, noxious  
3789 chemical substances, and like substances, the judge or court shall require such person to undergo a  
3790 substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse  
3791 testing, to include alcohol testing, as may be directed by the court. The cost of such testing ordered by  
3792 the court shall be paid by the Commonwealth and taxed as a part of the costs of the criminal  
3793 proceedings. The judge or court shall also order the person to undergo such treatment or education for  
3794 substance abuse, if available, as the judge or court deems appropriate based upon consideration of the  
3795 substance abuse assessment. The treatment or education shall be provided by a program or agency  
3796 licensed by the Department of Behavioral Health and Developmental Services or by a similar program  
3797 or services available through the Department of Corrections if the court imposes a sentence of one year  
3798 or more or, if the court imposes a sentence of 12 months or less, by a similar program or services  
3799 available through a local or regional jail, a local community-based probation services agency established  
3800 pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

3801 B. The court trying the case of any person alleged to have committed any criminal offense  
3802 designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case  
3803 in which the commission of the offense was motivated by or closely related to the use of drugs and  
3804 determined by the court, pursuant to a substance abuse screening and assessment, to be in need of  
3805 treatment for the use of drugs may commit, based upon a consideration of the substance abuse  
3806 assessment, such person, upon his conviction, to any facility for the treatment of persons with substance  
3807 abuse, licensed by the Department of Behavioral Health and Developmental Services, if space is  
3808 available in such facility, for a period of time not in excess of the maximum term of imprisonment  
3809 specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in  
3810 excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be,



in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. A charge of escape may be prosecuted in either the jurisdiction where the treatment facility is located or the jurisdiction where the person was sentenced to commitment. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

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

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

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

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

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

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

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

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

1. (Effective until July 1, 2021) Upon the property, including buildings and grounds, of any public or private elementary or secondary school, any institution of higher education, or any clearly marked licensed child day center as defined in § 63.2-100;

1. (Effective July 1, 2021) Upon the property, including buildings and grounds, of any public or private elementary or secondary school, any institution of higher education, or any clearly marked licensed child day center as defined in § 22.1-289.02;

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

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

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

3872 5. Upon the property, including buildings and grounds, of any publicly owned or publicly operated  
3873 recreation or community center facility or any public library; or

3874 6. Upon the property of any state facility as defined in § 37.2-100 or upon public property or  
3875 property open to public use within 1,000 feet of such an institution.

3876 It is a violation of the provisions of this section if the person possessed the controlled substance, *or*  
3877 imitation controlled substance, ~~or marijuana~~ on the property described in subdivisions 1 through 6,  
3878 regardless of where the person intended to sell, give, or distribute the controlled substance, *or* imitation  
3879 controlled substance, ~~or marijuana~~. Nothing in this section shall prohibit the authorized distribution of  
3880 controlled substances.

3881 B. ~~Violation~~ A violation of this section shall constitute a separate and distinct felony. Any person  
3882 violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than  
3883 one year nor more than five years and fined not more than \$100,000. A second or subsequent conviction  
3884 hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug  
3885 Control Act (§ 54.1-3400 et seq.) ~~or more than one-half ounce of marijuana~~ shall be punished by a  
3886 mandatory minimum term of imprisonment of one year to be served consecutively with any other  
3887 sentence. However, if such person proves that he sold such controlled substance ~~or marijuana~~ only as an  
3888 accommodation to another individual and not with intent to profit thereby from any consideration  
3889 received or expected nor to induce the recipient or intended recipient of the controlled substance ~~or~~  
3890 ~~marijuana~~ to use or become addicted to or dependent upon such controlled substance ~~or marijuana~~, he is  
3891 guilty of a Class 1 misdemeanor.

3892 C. If a person commits an act violating the provisions of this section, and the same act also violates  
3893 another provision of law that provides for penalties greater than those provided for by this section, then  
3894 nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of  
3895 law or the imposition of any penalties provided for thereby.

3896 **§ 18.2-258. Certain premises deemed common nuisance; penalty.**

3897 Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse,  
3898 dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, which with the  
3899 knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or  
3900 tenant thereof, is frequented by persons under the influence of illegally obtained controlled substances ~~or~~  
3901 ~~marijuana~~, as defined in § 54.1-3401, or for the purpose of illegally obtaining possession of,  
3902 manufacturing, or distributing controlled substances ~~or marijuana~~, or is used for the illegal possession,  
3903 manufacture, or distribution of controlled substances ~~or marijuana~~ shall be deemed a common nuisance.  
3904 Any such owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant  
3905 who knowingly permits, establishes, keeps or maintains such a common nuisance is guilty of a Class 1  
3906 misdemeanor and, for a second or subsequent offense, a Class 6 felony.

3907 **§ 18.2-258.01. Enjoining nuisances involving illegal drug transactions.**

3908 The attorney for the Commonwealth, or any citizen of the county, city, or town, where such a  
3909 nuisance as is described in § 3.2-4190 *or* 18.2-258 exists, may, in addition to the remedies given in and  
3910 punishment imposed by this chapter, maintain a suit in equity in the name of the Commonwealth to  
3911 enjoin the same; provided, however, the attorney for the Commonwealth shall not be required to  
3912 prosecute any suit brought by a citizen under this section. In every case where the bill charges, on the  
3913 knowledge or belief of complainant, and is sworn to by two witnesses, that a nuisance exists as  
3914 described in § 3.2-4190 *or* 18.2-258, a temporary injunction may be granted as soon as the bill is  
3915 presented to the court provided reasonable notice has been given. The injunction shall enjoin and  
3916 restrain any owners, tenants, their agents, employees, and any other person from contributing to or  
3917 maintaining the nuisance and may impose such other requirements as the court deems appropriate. If,  
3918 after hearing, the court finds that the material allegations of the bill are true, although the premises  
3919 complained of may not then be unlawfully used, it shall continue the injunction against such persons or  
3920 premises for such period of time as it deems appropriate, with the right to dissolve the injunction upon a  
3921 proper showing by the owner of the premises.

3922 **§ 18.2-258.02. Maintaining a fortified drug house; penalty.**

3923 Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse,  
3924 dwelling house, apartment or building or structure of any kind ~~which~~ *that* is (i) substantially altered  
3925 from its original status by means of reinforcement with the intent to impede, deter, or delay lawful entry  
3926 by a law-enforcement officer into such structure; (ii) being used for the purpose of manufacturing or  
3927 distributing controlled substances ~~or marijuana~~; and (iii) the object of a valid search warrant; shall be  
3928 considered a fortified drug house. Any person who maintains or operates a fortified drug house is guilty  
3929 of a Class 5 felony.

3930 **§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud,  
3931 deceit, forgery, etc.; penalties.**

3932 A. It ~~shall be~~ *is* unlawful for any person to obtain or attempt to obtain any drug or procure or  
3933 attempt to procure the administration of any controlled substance ~~or marijuana~~; (i) by fraud, deceit,

misrepresentation, embezzlement, or subterfuge; (ii) by the forgery or alteration of a prescription or of any written order; (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.

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

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

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

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

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

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

H. Except as otherwise provided in this subsection, any person who ~~shall violate~~ *violates* any provision herein ~~shall be~~ *is* guilty of a Class 6 felony.

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

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

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

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

Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall find the defendant guilty of a Class 1 misdemeanor.

#### **§ 18.2-265.1. 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 are intended by the person charged with violating § 18.2-265.3 for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, strength testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body ~~marijuana~~ or a controlled substance. It includes, but is not limited to:

1. Kits intended for use or designed for use in planting, propagating, cultivating, growing, or harvesting of ~~marijuana~~ or any species of plant which is a controlled substance or from which a controlled substance can be derived;

3995 2. Kits intended for use or designed for use in manufacturing, compounding, converting, producing,  
3996 processing, or preparing ~~marijuana~~ or controlled substances;  
3997 3. Isomerization devices intended for use or designed for use in increasing the potency of ~~marijuana~~  
3998 ~~or any species of plant which is a controlled substance;~~  
3999 4. Testing equipment intended for use or designed for use in identifying or in analyzing the strength  
4000 or effectiveness of ~~marijuana~~ or controlled substances, other than narcotic testing products used to  
4001 determine whether a controlled substance contains fentanyl or a fentanyl analog;  
4002 5. Scales and balances intended for use or designed for use in weighing or measuring ~~marijuana~~ or  
4003 controlled substances;  
4004 6. Diluents and adulterants, such as quinine hydrochloride, mannitol, or mannite, intended for use or  
4005 designed for use in cutting controlled substances;  
4006 7. ~~Separation gins and sifters intended for use or designed for use in removing twigs and seeds from,~~  
4007 ~~or in otherwise cleaning or refining, marijuana;~~  
4008 8. Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in  
4009 compounding controlled substances;  
4010 9. 8. Capsules, balloons, envelopes, and other containers intended for use or designed for use in  
4011 packaging small quantities of ~~marijuana~~ or controlled substances;  
4012 10. 9. Containers and other objects intended for use or designed for use in storing or concealing  
4013 ~~marijuana~~ or controlled substances;  
4014 11. 10. Hypodermic syringes, needles, and other objects intended for use or designed for use in  
4015 parenterally injecting controlled substances into the human body;  
4016 12. 11. Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing  
4017 ~~marijuana~~, cocaine, hashish, or hashish oil into the human body, such as:  
4018 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent  
4019 screens, hashish heads, or punctured metal bowls;  
4020 b. Water pipes;  
4021 c. Carburetion tubes and devices;  
4022 d. Smoking and carburetion masks;  
4023 e. Roach clips, meaning objects used to hold burning material, such as a ~~marijuana~~ cigarette, that has  
4024 become too small or too short to be held in the hand;  
4025 f. Miniature cocaine spoons, and cocaine vials;  
4026 g. Chamber pipes;  
4027 h. Carburetor pipes;  
4028 i. Electric pipes;  
4029 j. Air-driven pipes;  
4030 k. Chillums;  
4031 l. Bongs;  
4032 m. Ice pipes or chillers.  
4033 **§ 18.2-265.2. Evidence to be considered in cases under this article.**  
4034 In determining whether an object is drug paraphernalia, the court may consider, in addition to all  
4035 other relevant evidence, the following:  
4036 1. Constitutionally admissible statements by the accused concerning the use of the object;  
4037 2. The proximity of the object to ~~marijuana~~ or controlled substances, which proximity is actually  
4038 known to the accused;  
4039 3. Instructions, oral or written, provided with the object concerning its use;  
4040 4. Descriptive materials accompanying the object ~~which~~ *that* explain or depict its use;  
4041 5. National and local advertising within the actual knowledge of the accused concerning its use;  
4042 6. The manner in which the object is displayed for sale;  
4043 7. Whether the accused is a legitimate supplier of like or related items to the community, such as a  
4044 licensed distributor or dealer of tobacco products;  
4045 8. Evidence of the ratio of sales of the objects defined in § 18.2-265.1 to the total sales of the  
4046 business enterprise;  
4047 9. The existence and scope of legitimate uses for the object in the community;  
4048 10. Expert testimony concerning its use or the purpose for which it was designed; *and*  
4049 11. Relevant evidence of the intent of the accused to deliver it to persons who he knows, or should  
4050 reasonably know, intend to use the object with an illegal drug. The innocence of an owner, or of anyone  
4051 in control of the object, as to a direct violation of this article shall not prevent a finding that the object  
4052 is intended for use or designed for use as drug paraphernalia.  
4053 **§ 18.2-265.3. Penalties for sale, etc., of drug paraphernalia.**  
4054 A. Any person who sells or possesses with intent to sell drug paraphernalia, knowing, or under  
4055 circumstances where one reasonably should know, that it is either designed for use or intended by such  
4056 person for use to illegally plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,

produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body ~~marijuana or~~ a controlled substance, ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

B. Any person ~~eighteen~~ 18 years of age or older who violates subsection A hereof by selling drug paraphernalia to a minor who is at least three years junior to the accused in age ~~shall be~~ *is* guilty of a Class 6 felony.

C. Any person ~~eighteen~~ 18 years of age or older who distributes drug paraphernalia to a minor ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

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

Any person who, while committing a crime of violence as defined in § 18.2-288 ~~(2) or, a violation of § 3.2-4170, a felony violation of § 18.2-248, or a violation of subdivision (a) 2 or 3 of § 18.2-248.1 B 2 or 3 of § 3.2-4166,~~ has in his possession a firearm or knife and is wearing body armor designed to diminish the effect of the impact of a bullet or projectile ~~shall be~~ *is* guilty of a Class 4 felony.

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

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

1. (Effective until July 1, 2021) An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, or 18.2-308.1:6 or the substantially similar law of any other state or of the United States.

1. (Effective July 1, 2021) An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:6, or 18.2-308.1:7 or the substantially similar law of any other state or of the United States.

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

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

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

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

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

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

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

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

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

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

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

12. An individual who is a fugitive from justice.

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

specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

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

15. An individual who has been convicted of stalking.

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

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

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

19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) ~~or, former § 18.2-248.1:1, or Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2~~ or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) ~~or, former § 18.2-248.1:1, or Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2~~ or upon a charge of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

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

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, ~~or § 18.2-250 or 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.

**§ 18.2-308.4. Possession of firearms while in possession of certain substances.**

A. It ~~shall be~~ *is* unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) ~~of Title 54.1~~ to simultaneously with knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.

B. It ~~shall be~~ *is* unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of two years. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. It ~~shall be~~ *is* unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm, or *to* display such weapon in a threatening manner, while committing or attempting to commit the illegal manufacture, sale, ~~or distribution,~~ or ~~the possession~~ *possessing* with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) ~~or more than one pound of marijuana.~~ A violation of this subsection is a Class 6 felony; and constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of five years. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

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

**penalties.**

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

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

C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in any court relating to a violation of or conspiracy to violate § 18.2-248 or subdivision (a)(3), (b) or (c) of § 18.2-248, 3.2-4164, subdivision B 3 of § 3.2-4166, subsection B of § 3.2-4167, or § 3.2-4170, 18.2-46.2 or §, 18.2-46.3, or 18.2-248 or relating to the violation of or conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he is guilty of a Class 5 felony.

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

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

**§ 18.2-474.1. Delivery of drugs, firearms, explosives, etc., to prisoners or committed persons; penalties.**

Notwithstanding the provisions of § 18.2-474, any person who shall willfully in any manner deliver, attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, or to any person committed to the Department of Juvenile Justice in any juvenile correctional center, any drug which is a controlled substance regulated by the Drug Control Act in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 or marijuana is guilty of a Class 5 felony. Any person who shall willfully in any manner so deliver or attempt to deliver, or conspire to deliver to any such prisoner or confined or committed person, firearms, ammunition, or explosives of any nature is guilty of a Class 3 felony.

Nothing herein contained shall be construed to repeal or amend § 18.2-473.

**§ 18.2-513. Definitions.**

As used in this chapter:

"Criminal street gang" means the same as that term is defined in § 18.2-46.1.

"Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business trust, criminal street gang; or other group of three or more individuals associated for the purpose of criminal activity.

"Proceeds" means the same as that term is defined in § 18.2-246.2.

"Racketeering activity" means to commit, attempt to commit, or conspire to commit or to solicit, coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4, § 18.2-460; a felony offense of Article 7 (§ 3.2-4159) of Chapter 41.2 of Title 3.2, § 3.2-4212, 3.2-4219, 3.2-6571, 10.1-1455, 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4, § 18.2-47, 18.2-48, 18.2-48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-59, 18.2-77, 18.2-79, 18.2-80, 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-95, Article 4 (§ 18.2-111 et seq.) of Chapter 5, Article 1 (§ 18.2-168 et seq.) of Chapter 6, § 18.2-178 or 18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6, § 18.2-246.13, Article 1 (§ 18.2-247 et seq.) of Chapter 7, § 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 18.2-308.2.1, 18.2-328, 18.2-346, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-368, 18.2-369, or 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9, Article 1 (§ 18.2-434 et seq.) of Chapter 10, Article 2 (§ 18.2-438 et seq.) of Chapter 10, or Article 3 (§ 18.2-446 et seq.) of Chapter 10, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12, or § 3.2-6571, 18.2-516, 32.1-314, 58.1-1008.2, 58.1-1017, or

58.1-1017.1; or any substantially similar offenses under the laws of any other state, the District of Columbia, or the United States or its territories.

**§ 19.2-11.2. Crime victim's right to nondisclosure of certain information; exceptions; testimonial privilege.**

Upon request of any witness in a criminal prosecution under § 3.2-4170, 18.2-46.2, 18.2-46.3, or 18.2-248 or of any violent felony as defined by subsection C of § 17.1-805, or any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, the counsel for a defendant, a court nor the Department of Corrections, nor any employee of any of them, may disclose, except among themselves, the residential address, any telephone number, email address, or place of employment of the witness or victim or a member of the witness' or victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause.

Except with the written consent of the victim of any crime involving any sexual assault, sexual abuse, or family abuse or the victim's next of kin if the victim is a minor and the victim's death results from any crime, a law-enforcement agency may not disclose to the public information that directly or indirectly identifies the victim of such crime except to the extent that disclosure is (a) of the site of the crime, (b) required by law, (c) necessary for law-enforcement purposes, or (d) permitted by the court for good cause. In addition, at the request of the victim to the Court of Appeals of Virginia or the Supreme Court of Virginia hearing, on or after July 1, 2007, the case of a crime involving any sexual assault or sexual abuse, no appellate decision shall contain the first or last name of the victim.

Nothing herein shall limit the right to examine witnesses in a court of law or otherwise affect the conduct of any criminal proceeding.

**§ 19.2-66. When Attorney General or Chief Deputy Attorney General may apply for order authorizing interception of communications.**

A. The Attorney General or Chief Deputy Attorney General, if the Attorney General so designates in writing, in any case where the Attorney General is authorized by law to prosecute or pursuant to a request in his official capacity of an attorney for the Commonwealth in any city or county, may apply to a judge of competent jurisdiction for an order authorizing the interception of wire, electronic or oral communications by the Department of State Police, when such interception may reasonably be expected to provide evidence of the commission of a felonious offense of extortion, bribery, kidnapping, murder, any felony violation of § 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4170, or 18.2-248 or 18.2-248.1, any felony violation of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, any felony violation of Article 2 (§ 18.2-38 et seq.), Article 2.1 (§ 18.2-46.1 et seq.), Article 2.2 (§ 18.2-46.4 et seq.), Article 5 (§ 18.2-58 et seq.), or Article 6 (§ 18.2-59 et seq.) or of any felonies felony that are is not a Class 6 felonies felony in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any conspiracy to commit any of the foregoing offenses. The Attorney General or Chief Deputy Attorney General may apply for authorization for the observation or monitoring of the interception by a police department of a county or city, by a sheriff's office, or by law-enforcement officers of the United States. Such application shall be made, and such order may be granted, in conformity with the provisions of § 19.2-68.

B. The application for an order under subsection B of § 19.2-68 shall be made as follows:

1. In the case of an application for a wire or electronic interception, a judge of competent jurisdiction shall have the authority to issue an order under subsection B of § 19.2-68 if there is probable cause to believe that an offense was committed, is being committed, or will be committed or the person or persons whose communications are to be intercepted live, work, subscribe to a wire or electronic communication system, maintain an address or a post office box, or are making the communication within the territorial jurisdiction of the court.

2. In the case of an application for an oral intercept, a judge of competent jurisdiction shall have the authority to issue an order under subsection B of § 19.2-68 if there is probable cause to believe that an offense was committed, is being committed, or will be committed or the physical location of the oral communication to be intercepted is within the territorial jurisdiction of the court.

C. For the purposes of an order entered pursuant to subsection B of § 19.2-68 for the interception of a wire or electronic communication, such communication shall be deemed to be intercepted in the jurisdiction where the order is entered, regardless of the physical location or the method by which the communication is captured or routed to the monitoring location.

**§ 19.2-81.1. Arrest without warrant by correctional officers in certain cases.**

Any correctional officer, as defined in § 53.1-1, may arrest, in the same manner as provided in § 19.2-81, persons for crimes involving:

(a) 1. The escape of an inmate from a correctional institution, as defined in § 53.1-1;

(b) 2. Assisting an inmate to escape from a correctional institution, as defined in § 53.1-1;

(c) 3. The delivery of contraband to an inmate in violation of § 3.2-4174, 18.2-474, or § 18.2-474.1; and



(d) 4. Any other criminal offense which may contribute to the disruption of the safety, welfare, or security of the population of a correctional institution.

**§ 19.2-83.1. Report of arrest of school employees and adult students for certain offenses.**

A. Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, upon arresting a person who is known or discovered by the arresting official to be a full-time, part-time, permanent, or temporary teacher or other employee in any public school division in this Commonwealth for a felony or a Class 1 misdemeanor or an equivalent offense in another state shall file a report of such arrest with the division superintendent of the employing division as soon as practicable. The contents of the report required pursuant to this section shall be utilized by the local school division solely to implement the provisions of subsection B of § 22.1-296.2 and § 22.1-315.

B. Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, shall file a report, as soon as practicable, with the division superintendent of the school division in which the student is enrolled upon arresting a person who is known or discovered by the arresting official to be a student age 18 or older in any public school division in this the Commonwealth for:

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

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

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

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

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

6. Manufacture, sale or distribution of marijuana pursuant to Article 4 (~~§ 18.2-247 et seq.~~) of Chapter 7 of Title 18.2 7 (~~§ 3.2-4159 et seq.~~) of Chapter 41.2 of Title 3.2;

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

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

9. Robbery pursuant to § 18.2-58;

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

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

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

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

**§ 19.2-120. Admission to bail.**

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or

2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;

2. An offense for which the maximum sentence is life imprisonment or death;

3. A violation of § 18.2-248, 18.2-248.01, 18.2-255, or 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;

4. A violation of § 3.2-4173, 18.2-308.1, 18.2-308.2, or 18.2-308.4 and which relates to a firearm and provides for a mandatory minimum sentence;

5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of the Commonwealth or substantially similar laws of the United States;

6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;

7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;

4364 8. A violation of § 18.2-374.1 or 18.2-374.3 where the offender has reason to believe that the  
4365 solicited person is under 15 years of age and the offender is at least five years older than the solicited  
4366 person;

4367 9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5, or 18.2-46.7;

4368 10. A violation of § 18.2-36.1, 18.2-51.4, 18.2-266, or 46.2-341.24 and the person has, within the  
4369 past five years of the instant offense, been convicted three times on different dates of a violation of any  
4370 combination of these Code sections, or any ordinance of any county, city, or town or the laws of any  
4371 other state or of the United States substantially similar thereto, and has been at liberty between each  
4372 conviction;

4373 11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4 or a substantially similar offense  
4374 under the laws of any state or the United States;

4375 12. A violation of subsection B of § 18.2-57.2;

4376 13. A violation of subsection C of § 18.2-460 charging the use of threats of bodily harm or force to  
4377 knowingly attempt to intimidate or impede a witness;

4378 14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in  
4379 § 16.1-228; or

4380 15. A violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1.

4381 C. The judicial officer shall presume, subject to rebuttal, that no condition or combination of  
4382 conditions will reasonably assure the appearance of the person or the safety of the public if the person is  
4383 being arrested pursuant to § 19.2-81.6.

4384 D. For a person who is charged with an offense giving rise to a rebuttable presumption against bail,  
4385 any judicial officer may set or admit such person to bail in accordance with this section.

4386 E. The judicial officer shall consider the following factors and such others as it deems appropriate in  
4387 determining, for the purpose of rebuttal of the presumption against bail described in subsection B,  
4388 whether there are conditions of release that will reasonably assure the appearance of the person as  
4389 required and the safety of the public:

4390 1. The nature and circumstances of the offense charged;

4391 2. The history and characteristics of the person, including his character, physical and mental  
4392 condition, family ties, employment, financial resources, length of residence in the community,  
4393 community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in  
4394 a criminal street gang as defined in § 18.2-46.1, and record concerning appearance at court proceedings;  
4395 and

4396 3. The nature and seriousness of the danger to any person or the community that would be posed by  
4397 the person's release.

4398 F. The judicial officer shall inform the person of his right to appeal from the order denying bail or  
4399 fixing terms of bond or recognizance consistent with § 19.2-124.

4400 G. If the judicial officer sets a secured bond and the person engages the services of a licensed bail  
4401 bondsman, the magistrate executing recognizance for the accused shall provide the bondsman, upon  
4402 request, with a copy of the person's Virginia criminal history record, if readily available, to be used by  
4403 the bondsman only to determine appropriate reporting requirements to impose upon the accused upon his  
4404 release. The bondsman shall pay a \$15 fee payable to the state treasury to be credited to the Literary  
4405 Fund, upon requesting the defendant's Virginia criminal history record issued pursuant to § 19.2-389.  
4406 The bondsman shall review the record on the premises and promptly return the record to the magistrate  
4407 after reviewing it.

4408 **§ 19.2-120.1. Presumption of no bail for illegal aliens charged with certain crimes.**

4409 A. In addition to the presumption against the admission to bail under subsection B of § 19.2-120, the  
4410 judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will  
4411 reasonably assure the appearance of the person or the safety of the public if (i) the person is currently  
4412 charged with an offense listed in subsection A of § 19.2-297.1, subsection C of § 17.1-805, any offense  
4413 under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 except any offense under subsection A of § 18.2-57.2,  
4414 any felony offense under *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Article 1 (§*  
4415 *18.2-247 et seq.) of Chapter 7 of Title 18.2, or any offense under Article 2 (§ 18.2-266 et seq.), or any*  
4416 *local ordinance substantially similar thereto, 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299*  
4417 *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, and (ii) the*  
4418 *person has been identified as being illegally present in the United States by United States Immigration*  
4419 *and Customs Enforcement.*

4420 B. Notwithstanding subsection A, no presumption shall exist under this section as to any  
4421 misdemeanor offense, or any felony offense under *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title*  
4422 *3.2 or Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, unless United States Immigration and*  
4423 *Customs Enforcement has guaranteed that, in all such cases in the Commonwealth, it will issue a*  
4424 *detainer for the initiation of removal proceedings and agree to reimburse for the cost of incarceration*  
4425 *from the time of the issuance of the detainer.*

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

A. In any preliminary hearing on a violation of Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2, 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, or imitation controlled substance, or marijuana, as defined in § 18.2-247 or marijuana as defined in § 3.2-4122.

B. In any trial for a violation of § ~~18.2-250.1~~ 3.2-4160 or 3.2-4161, 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~~ 3.2-4160 or 3.2-4161, 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~~ 3.2-4197 and shall prescribe in its order the method of custody, transfer, and return of evidence submitted for chemical analysis.

**§ 19.2-215.1. Functions of a multi-jurisdiction grand jury.**

The functions of a multi-jurisdiction grand jury are:

1. To investigate any condition that involves or tends to promote criminal violations of:
  - a. Title 10.1 for which punishment as a felony is authorized;
  - b. § 13.1-520;
  - c. §§ 18.2-47 and 18.2-48;
  - d. §§ 18.2-111 and 18.2-112;
  - e. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2;
  - f. Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2;
  - g. Article 1 (§ 18.2-247 et seq.) and Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2;
  - h. Article 1 (§ 18.2-325 et seq.) and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or otherwise affecting gaming or gambling activity;
  - i. § 18.2-434, when violations occur before a multi-jurisdiction grand jury;
  - j. Article 2 (§ 18.2-438 et seq.) and Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2;
  - k. § 18.2-460 for which punishment as a felony is authorized;
  - l. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2;
  - m. Article 1 (§ 32.1-310 et seq.) of Chapter 9 of Title 32.1;
  - n. Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1;
  - o. Article 9 (§ 3.2-6570 et seq.) of Chapter 65 of Title 3.2;
  - p. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
  - q. Article 2.1 (§ 18.2-46.1 et seq.) and Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2;
  - r. Article 5 (§ 18.2-186 et seq.) and Article 6 (§ 18.2-191 et seq.) of Chapter 6 of Title 18.2;
  - s. Chapter 6.1 (§ 59.1-92.1 et seq.) of Title 59.1;
  - t. § 18.2-178 where the violation involves insurance fraud;
  - u. § 18.2-346, 18.2-348, or 18.2-349 for which punishment as a felony is authorized or § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1;
  - v. Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2;
  - w. Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2;
  - x. Malicious felonious assault and malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;
  - y. Article 5 (§ 18.2-58 et seq.) of Chapter 4 of Title 18.2;
  - z. Felonious sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
  - aa. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;
  - ab. Chapter 13 (§ 18.2-512 et seq.) of Title 18.2;
  - ac. § 18.2-246.14 and Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1;
  - ad. Subsection A or B of § 18.2-57 where the victim was selected because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin;
  - ae. § 18.2-121 for which punishment as a felony is authorized;

4487 af. Article 5 (§ 18.2-420 et seq.) of Chapter 9 of Title 18.2; ~~and~~  
4488 ag. *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2; and*  
4489 ah. Any other provision of law when such condition is discovered in the course of an investigation  
4490 that a multi-jurisdiction grand jury is otherwise authorized to undertake and to investigate any condition  
4491 that involves or tends to promote any attempt, solicitation, or conspiracy to violate the laws enumerated  
4492 in this section.

4493 2. To report evidence of any criminal offense enumerated in subdivision 1 and for which a court  
4494 reporter has recorded all oral testimony as provided by § 19.2-215.9 to the attorney for the  
4495 Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or  
4496 investigated, or to the chief law-enforcement officer of any jurisdiction where such offense could be  
4497 prosecuted or investigated, or to a sworn investigator designated pursuant to § 19.2-215.6, or, when  
4498 appropriate, to the Attorney General.

4499 3. To consider bills of indictment prepared by a special counsel to determine whether there is  
4500 sufficient probable cause to return each such indictment as a "true bill." Only bills of indictment ~~which~~  
4501 *that* allege an offense enumerated in subdivision 1 may be submitted to a multi-jurisdiction grand jury.

4502 4. The provisions of this section shall not abrogate the authority of an attorney for the  
4503 Commonwealth in a particular jurisdiction to determine the course of a prosecution in that jurisdiction.

4504 **§ 19.2-291.1. Report of conviction of school employees for certain offenses.**

4505 The clerk of any circuit court or any district court in the Commonwealth shall report to the  
4506 Superintendent of Public Instruction and the division superintendent of any employing school division  
4507 the conviction of any person, known by such clerk to hold a license issued by the Board of Education,  
4508 for any felony involving the sexual molestation, physical or sexual abuse, or rape of a child or involving  
4509 drugs pursuant to *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Article 1 (§ 18.2-247 et*  
4510 *seq.) of Chapter 7 of Title 18.2.*

4511 **§ 19.2-299. Investigations and reports by probation officers in certain cases.**

4512 A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of  
4513 § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4,  
4514 attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of  
4515 § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the  
4516 attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a  
4517 felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement  
4518 between the defendant and the Commonwealth and shall, unless waived by the defendant and the  
4519 attorney for the Commonwealth, when the defendant pleads guilty or nolo contendere without a plea  
4520 agreement or is found guilty by the court after a plea of not guilty or nolo contendere; or (iii) the court  
4521 shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or  
4522 attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, clause (2) or (3) of § 18.2-49,  
4523 § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5,  
4524 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1,  
4525 or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5,  
4526 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report  
4527 upon the history of the accused, including a report of the accused's criminal record as an adult and  
4528 available juvenile court records, any information regarding the accused's participation or membership in  
4529 a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so  
4530 the court may determine the appropriate sentence to be imposed. Unless the defendant or the attorney  
4531 for the Commonwealth objects, the court may order that the report contain no more than the defendant's  
4532 criminal history, any history of substance abuse, any physical or health-related problems as may be  
4533 pertinent, and any applicable sentencing guideline worksheets. This expedited report shall be subject to  
4534 all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The  
4535 probation officer, after having furnished a copy of this report at least five days prior to sentencing to  
4536 counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his  
4537 report in advance of the sentencing hearing to the judge in chambers, who shall keep such report  
4538 confidential. Counsel for the accused may provide the accused with a copy of the presentence report.  
4539 The probation officer shall be available to testify from this report in open court in the presence of the  
4540 accused, who shall have been provided with a copy of the presentence report by his counsel or advised  
4541 of its contents and be given the right to cross-examine the investigating officer as to any matter  
4542 contained therein and to present any additional facts bearing upon the matter. The report of the  
4543 investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part  
4544 of the record in the case. Any report so filed shall be made available only by court order and shall be  
4545 sealed upon final order by the court, except that such reports or copies thereof shall be available at any  
4546 time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United  
4547 States; to any agency where the accused is referred for treatment by the court or by probation and  
4548 parole services; and to counsel for any person who has been indicted jointly for the same felony as the

person subject to the report. Subject to the limitations set forth in § 37.2-901, any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person (a) is charged with a felony subsequent to the time of the preparation of the report or (b) has been convicted of the crime or crimes for which the report was prepared and is pursuing a post-conviction remedy. Such report shall be made available for review without a court order to incarcerated persons who are eligible for release by the Virginia Parole Board, or such person's counsel, pursuant to regulations promulgated by the Virginia Parole Board for that purpose. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection, information regarding the accused's participation or membership in a criminal street gang may include the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and types of crimes that are likely to be committed by that criminal street gang.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2*, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

**§ 19.2-299.2. Alcohol and substance abuse screening and assessment for designated Class 1 misdemeanor convictions.**

A. When a person is convicted of any offense committed on or after January 1, 2000, under *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2*, and such offense is punishable as a Class 1 misdemeanor, or when a person is convicted for a second offense of petit larceny, the court shall order the person to undergo a substance abuse screening as part of the sentence if the defendant's sentence includes probation supervision by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 or participation in a local alcohol safety action program. Whenever a court requires a person to enter into and successfully complete an alcohol safety action program pursuant to § 18.2-271.1 for a second offense of the type described therein, or orders an evaluation of a person to be conducted by an alcohol safety action program pursuant to any provision of § 46.2-391, the alcohol safety action program shall assess such person's degree of alcohol abuse before determining the appropriate level of treatment to be provided or to be recommended for such person being evaluated pursuant to § 46.2-391.

The court may order such screening upon conviction as part of the sentence of any other Class 1 misdemeanor if the defendant's sentence includes probation supervision by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, participation in a local alcohol safety action program or any other sanction and the court has reason to believe the defendant has a substance abuse or dependence problem.

B. A substance abuse screening ordered pursuant to this section shall be conducted by the local alcohol safety action program. When an offender is ordered to enter local community-based probation services established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, rather than the local alcohol safety action program, the local community-based probation services agency shall be responsible for the screening. However, if a local community-based probation services agency has not been established for the locality, the local alcohol safety action program shall conduct the screening as part of the sentence.

C. If the screening indicates that the person has a substance abuse or dependence problem, an assessment shall be completed and if the assessment confirms that the person has a substance abuse or dependence problem, as a condition of a suspended sentence and probation, the court shall order the person to complete the substance abuse education and intervention component, or both as appropriate, of the local alcohol safety action program or such other agency providing treatment programs or services, if available, such as in the opinion of the court would be best suited to the needs of the person. If the

referral is to the local alcohol safety action program, the program may charge a fee for the education and intervention component, or both, not to exceed \$300, based upon the defendant's ability to pay.

**§ 19.2-303.01. Reduction of sentence; substantial assistance to prosecution.**

Notwithstanding any other provision of law or rule of court, upon motion of the attorney for the Commonwealth, the sentencing court may reduce the defendant's sentence if the defendant, after entry of the final judgment order, provided substantial assistance in investigating or prosecuting another person for (i) an act of violence as defined in § 19.2-297.1, an act of larceny of a firearm in violation of § 18.2-95, or any violation of § 3.2-4164 or 3.2-4166, subsection B of § 3.2-4167, or § 3.2-4168, 3.2-4170, 3.2-4171, 3.2-4172, 3.2-4175, 3.2-4190, 3.2-4191, 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.4, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2, or any substantially similar offense in any other jurisdiction, which offense would be a felony if committed in the Commonwealth; (ii) a conspiracy to commit any of the offenses listed in clause (i); or (iii) violations as a principal in the second degree or accessory before the fact of any of the offenses listed in clause (i). In determining whether the defendant has provided substantial assistance pursuant to the provisions of this section, the court shall consider (a) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the Commonwealth's evaluation of the assistance rendered; (b) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant; (c) the nature and extent of the defendant's assistance; (d) any injury suffered or any danger or risk of injury to the defendant or his family resulting from his assistance; and (e) the timeliness of the defendant's assistance. If the motion is made more than one year after entry of the final judgment order, the court may reduce a sentence only if the defendant's substantial assistance involved (1) information not known to the defendant until more than one year after entry of the final judgment order, (2) information provided by the defendant within one year of entry of the final judgment order but that did not become useful to the Commonwealth until more than one year after entry of the final judgment order, or (3) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after entry of the final judgment order and which was promptly provided to the Commonwealth by the defendant after its usefulness was reasonably apparent.

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

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2: (i) all money, medical equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or distribution of controlled substances or possession with intent to sell or distribute controlled substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute marijuana in violation of § 3.2-4164 or subdivisions (a)(2), (a)(3) and (e) of § 18.2-248.1 B 2 or 3 of § 3.2-4166, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248 or for marijuana in violation of § 18.2-248.1 3.2-4166 or for a controlled substance or marijuana in violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange, together with any interest or profits derived from the investment of such money or other property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years.

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

**§ 19.2-386.23. Disposal of seized controlled substances, marijuana, drug paraphernalia, and marijuana paraphernalia.**

A. All controlled substances, imitation controlled substances, marijuana, or drug paraphernalia, or marijuana paraphernalia, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, shall be forfeited and disposed of as follows:

1. Upon written application by (i) the Department of Forensic Science, (ii) the Department of State Police, or (iii) any police department or sheriff's office in a locality, the court may order the forfeiture of any such substance or drug paraphernalia, or marijuana paraphernalia to the Department of Forensic Science, the Department of State Police, or to such police department or sheriff's office for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1, the court shall order the destruction of all

such substances *or, drug paraphernalia, or marijuana paraphernalia*, which order shall state the existence and nature of the substance *or, drug paraphernalia, or marijuana paraphernalia*, the quantity thereof, the location where seized, the person or persons from whom the substance *or, drug paraphernalia, or marijuana paraphernalia* was seized, if known, and the manner whereby such item shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of § 18.2-265.1 not be destroyed and that it be given to a person or entity that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and publicly beneficial use. A return under oath, reporting the time, place, and manner of destruction shall be made to the court by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance *or, drug paraphernalia, or marijuana paraphernalia* was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is given, or otherwise comes into possession of any such substances *or, drug paraphernalia, or marijuana paraphernalia* that are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency or his designee may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that a statement under oath, reporting a description of the substances and *drug or marijuana* paraphernalia destroyed and the time, place and manner of destruction, is made to the chief law-enforcement officer by the officer to whom the order is directed.

B. No such substance *or, drug paraphernalia, or marijuana paraphernalia* used or to be used in a criminal prosecution under *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Chapter 7 (§ 18.2-247 et seq.) of Title 18.2* shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § 19.2-386.24.

C. The amount of any specific controlled substance, or imitation controlled substance, retained by any law-enforcement agency pursuant to a court order issued under this section shall not exceed five pounds, or 25 pounds in the case of marijuana. Any written application to the court for controlled substances, imitation controlled substances, or marijuana, shall certify that the amount requested shall not result in the requesting agency's exceeding the limits allowed by this subsection.

D. A law-enforcement agency that retains any controlled substance, imitation controlled substance, or marijuana, pursuant to a court order issued under this section shall (i) be required to conduct an inventory of such substance on a monthly basis, which shall include a description and weight of the substance, and (ii) destroy such substance pursuant to subdivision A 1 when no longer needed for research and training purposes. A written report outlining the details of the inventory shall be made to the chief law-enforcement officer of the agency within 10 days of the completion of the inventory, and the agency shall detail the substances that were used for research and training pursuant to a court order in the immediately preceding fiscal year. Destruction of such substance shall be certified to the court along with a statement prepared under oath, reporting a description of the substance destroyed, and the time, place, and manner of destruction.

**§ 19.2-386.24. Destruction of seized controlled substances or marijuana prior to trial.**

Where seizures of controlled substances or marijuana are made in excess of 10 pounds in connection with any prosecution or investigation under *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Chapter 7 (§ 18.2-247 et seq.) of Title 18.2*, the appropriate law-enforcement agency may retain 10 pounds of the substance randomly selected from the seized substance for representative purposes as evidence and destroy the remainder of the seized substance.

Before any destruction is carried out under this section, the law-enforcement agency shall cause the material seized to be photographed with identification case numbers or other means of identification and shall prepare a report identifying the seized material. It shall also notify the accused, or other interested party, if known, or his attorney, at least five days in advance that the photography will take place and that they may be present. Prior to any destruction under this section, the law-enforcement agency shall also notify the accused or other interested party, if known, and his attorney at least seven days prior to the destruction of the time and place the destruction will occur. Any notice required under the provisions of this section shall be by first-class mail to the last known address of the person required to be notified. In addition to the substance retained for representative purposes as evidence, all photographs and records made under this section and properly identified shall be admissible in any court proceeding for any purposes for which the seized substance itself would have been admissible.

**§ 19.2-386.25. Judge may order law-enforcement agency to maintain custody of controlled substances, etc.**

Upon request of the clerk of any court, a judge of the court may order a law-enforcement agency to take into its custody or to maintain custody of substantial quantities of any controlled substances, imitation controlled substances, chemicals, marijuana, or paraphernalia used or to be used in a criminal prosecution under *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Chapter 7 (§ 18.2-247 et seq.) of Title 18.2*. The court in its order may make provision for ensuring integrity of these items until

4733 further order of the court.

4734 **§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in**  
4735 **violation of law.**

4736 Any firearm, stun weapon as defined by § 18.2-308.1, or any weapon concealed, possessed,  
4737 transported or carried in violation of § 3.2-4173, 18.2-283.1, 18.2-287.01, 18.2-287.4, 18.2-308.1:2,  
4738 18.2-308.1:3, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7,  
4739 or 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

4740 **§ 19.2-389. (Effective until January 1, 2021) Dissemination of criminal history record**  
4741 **information.**

4742 A. Criminal history record information shall be disseminated, whether directly or through an  
4743 intermediary, only to:

4744 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for  
4745 purposes of the administration of criminal justice and the screening of an employment application or  
4746 review of employment by a criminal justice agency with respect to its own employees or applicants, and  
4747 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all  
4748 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,  
4749 3, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For  
4750 purposes of this subdivision, criminal history record information includes information sent to the Central  
4751 Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time  
4752 or part-time employee of the State Police, a police department or sheriff's office that is a part of or  
4753 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the  
4754 prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the  
4755 Commonwealth for the purposes of the administration of criminal justice;

4756 2. Such other individuals and agencies that require criminal history record information to implement  
4757 a state or federal statute or executive order of the President of the United States or Governor that  
4758 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such  
4759 conduct, except that information concerning the arrest of an individual may not be disseminated to a  
4760 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the  
4761 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is  
4762 pending;

4763 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide  
4764 services required for the administration of criminal justice pursuant to that agreement which shall  
4765 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the  
4766 security and confidentiality of the data;

4767 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities  
4768 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,  
4769 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and  
4770 security of the data;

4771 5. Agencies of state or federal government that are authorized by state or federal statute or executive  
4772 order of the President of the United States or Governor to conduct investigations determining  
4773 employment suitability or eligibility for security clearances allowing access to classified information;

4774 6. Individuals and agencies where authorized by court order or court rule;

4775 7. Agencies of any political subdivision of the Commonwealth, public transportation companies  
4776 owned, operated or controlled by any political subdivision, and any public service corporation that  
4777 operates a public transit system owned by a local government for the conduct of investigations of  
4778 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is  
4779 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a  
4780 conviction record would be compatible with the nature of the employment, permit, or license under  
4781 consideration;

4782 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of  
4783 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a  
4784 position of employment whenever, in the interest of public welfare or safety and as authorized in the  
4785 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person  
4786 with a conviction record would be compatible with the nature of the employment under consideration;

4787 8. Public or private agencies when authorized or required by federal or state law or interstate  
4788 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the  
4789 adult members of that individual's household, with whom the agency is considering placing a child or  
4790 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,  
4791 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
4792 the data shall not be further disseminated to any party other than a federal or state authority or court as  
4793 may be required to comply with an express requirement of law;

4794 9. To the extent permitted by federal law or regulation, public service companies as defined in



§ 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in *Article 1* (§ 3.2-4122 et seq.) of *Chapter 41.2 of Title 3.2* and *Article 1.1:1* (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,

4856 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of  
4857 higher education, for the purpose of assessing or intervening with an individual whose behavior may  
4858 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal  
4859 history record information obtained pursuant to this section or otherwise use any record of an individual  
4860 beyond the purpose that such disclosure was made to the threat assessment team;

4861 26. Executive directors of community services boards or the personnel director serving the  
4862 community services board for the purpose of determining an individual's fitness for employment,  
4863 approval as a sponsored residential service provider, or permission to enter into a shared living  
4864 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to  
4865 §§ 37.2-506 and 37.2-607;

4866 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
4867 determining an individual's fitness for employment, approval as a sponsored residential service provider,  
4868 or permission to enter into a shared living arrangement with a person receiving medical assistance  
4869 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

4870 28. The Commissioner of Social Services for the purpose of locating persons who owe child support  
4871 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the  
4872 name, address, demographics and social security number of the data subject shall be released;

4873 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
4874 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
4875 purpose of determining if any applicant who accepts employment in any direct care position or requests  
4876 approval as a sponsored residential service provider or permission to enter into a shared living  
4877 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted  
4878 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with  
4879 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and  
4880 37.2-607;

4881 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
4882 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
4883 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

4884 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates  
4885 for the purpose of determining if any person being considered for election to any judgeship has been  
4886 convicted of a crime;

4887 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
4888 determining an individual's fitness for employment in positions designated as sensitive under Department  
4889 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

4890 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under  
4891 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually  
4892 Violent Predators Act (§ 37.2-900 et seq.);

4893 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
4894 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
4895 companies, for the conduct of investigations of applications for employment or for access to facilities,  
4896 by contractors, leased laborers, and other visitors;

4897 35. Any employer of individuals whose employment requires that they enter the homes of others, for  
4898 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

4899 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
4900 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
4901 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
4902 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
4903 than a federal or state authority or court as may be required to comply with an express requirement of  
4904 law for such further dissemination, subject to limitations set out in subsection G;

4905 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
4906 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
4907 or have accepted a position related to the provision of transportation services to enrollees in the  
4908 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other  
4909 program administered by the Department of Medical Assistance Services;

4910 38. The State Corporation Commission for the purpose of investigating individuals who are current  
4911 or proposed members, senior officers, directors, and principals of an applicant or person licensed under  
4912 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any  
4913 other provision of law, if an application is denied based in whole or in part on information obtained  
4914 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the  
4915 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or  
4916 its designee;

4917 39. The Department of Professional and Occupational Regulation for the purpose of investigating

individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

45. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record

information pursuant to the rules of court for obtaining discovery or for review by the court.

**§ 19.2-389. (Effective January 1, 2021 and until July 1, 2021) Dissemination of criminal history record information.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in

§ 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in *Article 1 (§ 3.2-4122 et seq.) of Chapter 41.2 of Title 3.2 and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;*

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the

community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2; and

46. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

#### **§ 19.2-389. (Effective July 1, 2021) Dissemination of criminal history record information.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

5225 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for  
5226 purposes of the administration of criminal justice and the screening of an employment application or  
5227 review of employment by a criminal justice agency with respect to its own employees or applicants, and  
5228 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all  
5229 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,  
5230 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For  
5231 purposes of this subdivision, criminal history record information includes information sent to the Central  
5232 Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time  
5233 or part-time employee of the State Police, a police department or sheriff's office that is a part of or  
5234 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the  
5235 prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the  
5236 Commonwealth for the purposes of the administration of criminal justice;

5237 2. Such other individuals and agencies that require criminal history record information to implement  
5238 a state or federal statute or executive order of the President of the United States or Governor that  
5239 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such  
5240 conduct, except that information concerning the arrest of an individual may not be disseminated to a  
5241 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the  
5242 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is  
5243 pending;

5244 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide  
5245 services required for the administration of criminal justice pursuant to that agreement which shall  
5246 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the  
5247 security and confidentiality of the data;

5248 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities  
5249 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,  
5250 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and  
5251 security of the data;

5252 5. Agencies of state or federal government that are authorized by state or federal statute or executive  
5253 order of the President of the United States or Governor to conduct investigations determining  
5254 employment suitability or eligibility for security clearances allowing access to classified information;

5255 6. Individuals and agencies where authorized by court order or court rule;

5256 7. Agencies of any political subdivision of the Commonwealth, public transportation companies  
5257 owned, operated or controlled by any political subdivision, and any public service corporation that  
5258 operates a public transit system owned by a local government for the conduct of investigations of  
5259 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is  
5260 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a  
5261 conviction record would be compatible with the nature of the employment, permit, or license under  
5262 consideration;

5263 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of  
5264 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a  
5265 position of employment whenever, in the interest of public welfare or safety and as authorized in the  
5266 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person  
5267 with a conviction record would be compatible with the nature of the employment under consideration;

5268 8. Public or private agencies when authorized or required by federal or state law or interstate  
5269 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the  
5270 adult members of that individual's household, with whom the agency is considering placing a child or  
5271 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,  
5272 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
5273 the data shall not be further disseminated to any party other than a federal or state authority or court as  
5274 may be required to comply with an express requirement of law;

5275 9. To the extent permitted by federal law or regulation, public service companies as defined in  
5276 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
5277 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
5278 with the nature of the employment under consideration;

5279 10. The appropriate authority for purposes of granting citizenship and for purposes of international  
5280 travel, including, but not limited to, issuing visas and passports;

5281 11. A person requesting a copy of his own criminal history record information as defined in  
5282 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a  
5283 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of  
5284 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any  
5285 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board  
5286 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime



Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in *Article 1* (§ 3.2-4122 et seq.) of *Chapter 41.2 of Title 3.2* and *Article 1.1:1* (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider,

5348 or permission to enter into a shared living arrangement with a person receiving medical assistance  
5349 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

5350 28. The Commissioner of Social Services for the purpose of locating persons who owe child support  
5351 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the  
5352 name, address, demographics and social security number of the data subject shall be released;

5353 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
5354 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
5355 purpose of determining if any applicant who accepts employment in any direct care position or requests  
5356 approval as a sponsored residential service provider or permission to enter into a shared living  
5357 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted  
5358 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with  
5359 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and  
5360 37.2-607;

5361 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
5362 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
5363 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

5364 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates  
5365 for the purpose of determining if any person being considered for election to any judgeship has been  
5366 convicted of a crime;

5367 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
5368 determining an individual's fitness for employment in positions designated as sensitive under Department  
5369 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

5370 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under  
5371 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually  
5372 Violent Predators Act (§ 37.2-900 et seq.);

5373 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
5374 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
5375 companies, for the conduct of investigations of applications for employment or for access to facilities,  
5376 by contractors, leased laborers, and other visitors;

5377 35. Any employer of individuals whose employment requires that they enter the homes of others, for  
5378 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

5379 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
5380 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
5381 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
5382 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
5383 than a federal or state authority or court as may be required to comply with an express requirement of  
5384 law for such further dissemination, subject to limitations set out in subsection G;

5385 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
5386 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
5387 or have accepted a position related to the provision of transportation services to enrollees in the  
5388 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other  
5389 program administered by the Department of Medical Assistance Services;

5390 38. The State Corporation Commission for the purpose of investigating individuals who are current  
5391 or proposed members, senior officers, directors, and principals of an applicant or person licensed under  
5392 Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of  
5393 Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in  
5394 part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19,  
5395 or 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such  
5396 information to the applicant or its designee;

5397 39. The Department of Professional and Occupational Regulation for the purpose of investigating  
5398 individuals for initial licensure pursuant to § 54.1-2106.1;

5399 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and  
5400 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment  
5401 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11  
5402 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

5403 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

5404 42. The State Treasurer for the purpose of determining whether a person receiving compensation for  
5405 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

5406 43. The Department of Education or its agents or designees for the purpose of screening individuals  
5407 seeking to enter into a contract with the Department of Education or its agents or designees for the  
5408 provision of child care services for which child care subsidy payments may be provided;

5409 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of

a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

46. Administrators and board presidents of and applicants for licensure or registration as a child day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Superintendent of Public Instruction's representative, or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination; and

47. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

**§ 19.2-392.02. (Effective until July 1, 2021) National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or**

5471 **disabled.**

5472 A. For purposes of this section:

5473 "Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32,  
5474 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony  
5475 violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6,  
5476 or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or  
5477 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6,  
5478 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1,  
5479 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1;  
5480 any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1,  
5481 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1,  
5482 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86,  
5483 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282,  
5484 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 3.2-4173, 18.2-289, 18.2-290, 18.2-300,  
5485 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of  
5486 § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation  
5487 of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5,  
5488 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or  
5489 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 3.2-4174, 18.2-408,  
5490 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1,  
5491 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917,  
5492 or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation  
5493 of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under  
5494 the laws of another jurisdiction; (iii) any felony violation of § 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4168,  
5495 3.2-4170, 3.2-4171, 3.2-4172, 3.2-4175, 3.2-4190, 3.2-4191, 18.2-248, 18.2-248.01, 18.2-248.02,  
5496 18.2-248.03, ~~18.2-248.1~~, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258,  
5497 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another  
5498 jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of  
5499 another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to  
5500 register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any  
5501 finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et  
5502 seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register  
5503 with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially  
5504 similar offense under the laws of another jurisdiction; or any offense for which registration in a sex  
5505 offender and crimes against minors registry is required under the laws of the jurisdiction where the  
5506 offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless  
5507 five years have elapsed from the date of the conviction.

5508 "Barrier crime information" means the following facts concerning a person who has been arrested for,  
5509 or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the  
5510 time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief  
5511 description of the barrier crime or offenses for which the person has been arrested or has been  
5512 convicted, the disposition of the charge, and any other information that may be useful in identifying  
5513 persons arrested for or convicted of a barrier crime.

5514 "Care" means the provision of care, treatment, education, training, instruction, supervision, or  
5515 recreation to children or the elderly or disabled.

5516 "Department" means the Department of State Police.

5517 "Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or  
5518 seeks to volunteer for a qualified entity.

5519 "Identification document" means a document made or issued by or under the authority of the United  
5520 States government, a state, a political subdivision of a state, a foreign government, political subdivision  
5521 of a foreign government, an international governmental or an international quasi-governmental  
5522 organization that, when completed with information concerning a particular individual, is of a type  
5523 intended or commonly accepted for the purpose of identification of individuals.

5524 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may  
5525 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity  
5526 provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised  
5527 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or  
5528 operate a qualified entity.

5529 "Qualified entity" means a business or organization that provides care to children or the elderly or  
5530 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt  
5531 pursuant to subdivision A 7 of § 63.2-1715.

5532 B. A qualified entity may request the Department of State Police to conduct a national criminal

background check on any provider who is employed by such entity. No qualified entity may request a national criminal background check on a provider until such provider has:

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

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

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

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

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

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

H. [Expired.]

**§ 19.2-392.02. (Effective July 1, 2021) National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or disabled.**

A. For purposes of this section:

"Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 3.2-417.3, 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 3.2-417.4, 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1,

5594 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917,  
5595 or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation  
5596 of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under  
5597 the laws of another jurisdiction; (iii) any felony violation of § 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4168,  
5598 3.2-4170, 3.2-4171, 3.2-4172, 3.2-4175, 3.2-4190, 3.2-4191, 18.2-248, 18.2-248.01, 18.2-248.02,  
5599 18.2-248.03, ~~18.2-248.1~~, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258,  
5600 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another  
5601 jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of  
5602 another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to  
5603 register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any  
5604 finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et  
5605 seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register  
5606 with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially  
5607 similar offense under the laws of another jurisdiction; or any offense for which registration in a sex  
5608 offender and crimes against minors registry is required under the laws of the jurisdiction where the  
5609 offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless  
5610 five years have elapsed from the date of the conviction.

5611 "Barrier crime information" means the following facts concerning a person who has been arrested for,  
5612 or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the  
5613 time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief  
5614 description of the barrier crime or offenses for which the person has been arrested or has been  
5615 convicted, the disposition of the charge, and any other information that may be useful in identifying  
5616 persons arrested for or convicted of a barrier crime.

5617 "Care" means the provision of care, treatment, education, training, instruction, supervision, or  
5618 recreation to children or the elderly or disabled.

5619 "Department" means the Department of State Police.

5620 "Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or  
5621 seeks to volunteer for a qualified entity.

5622 "Identification document" means a document made or issued by or under the authority of the United  
5623 States government, a state, a political subdivision of a state, a foreign government, political subdivision  
5624 of a foreign government, an international governmental or an international quasi-governmental  
5625 organization that, when completed with information concerning a particular individual, is of a type  
5626 intended or commonly accepted for the purpose of identification of individuals.

5627 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may  
5628 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity  
5629 provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised  
5630 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or  
5631 operate a qualified entity.

5632 "Qualified entity" means a business or organization that provides care to children or the elderly or  
5633 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt  
5634 pursuant to subdivision A 7 of § 22.1-289.030.

5635 B. A qualified entity may request the Department of State Police to conduct a national criminal  
5636 background check on any provider who is employed by such entity. No qualified entity may request a  
5637 national criminal background check on a provider until such provider has:

5638 1. Been fingerprinted; and

5639 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and  
5640 date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the  
5641 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or  
5642 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime  
5643 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a  
5644 background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background  
5645 check report, to challenge the accuracy and completeness of any information contained in any such  
5646 report, and to obtain a prompt determination as to the validity of such challenge before a final  
5647 determination is made by the Department; and (v) a notice to the provider that prior to the completion  
5648 of the background check the qualified entity may choose to deny the provider unsupervised access to  
5649 children or the elderly or disabled for whom the qualified entity provides care.

5650 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a  
5651 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in  
5652 subsection B, the Department shall make a determination whether the provider has been convicted of or  
5653 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier  
5654 crime information, the Department shall access the national criminal history background check system,  
5655 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other

methods of identification, and shall access the Central Criminal Records Exchange maintained by the Department. If the Department receives a background report lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business days.

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

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

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

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

H. [Expired.]

**§ 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) the person 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) (a) the person is convicted or adjudicated delinquent of a felony violation of former § 18.2-248.1 or charged under that section and the charge is deferred and dismissed, (b) all court costs and fines and all orders of restitution have been satisfied, and (c) five years have passed since the date of completion of all terms of sentencing and probation,~~ he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the *arrest, charge, conviction, adjudication, or civil offense*.

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, *conviction, adjudication, or civil offense* to be expunged; the date of final disposition of the charge, *conviction, adjudication, or civil offense* 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

5717 hearing on the petition. If the court finds that the continued existence and possible dissemination of  
5718 information relating to the arrest, *charge, conviction, adjudication, or civil offense* of the petitioner  
5719 causes or may cause circumstances ~~which~~ *that* constitute a manifest injustice to the petitioner, it shall  
5720 enter an order requiring the expungement of the police and court records, including electronic records,  
5721 relating to the *arrest, charge, conviction, adjudication, or civil offense*. Otherwise, it shall deny the  
5722 petition. However, if the petitioner has no prior criminal record and the arrest, *charge, or conviction* was  
5723 for a misdemeanor violation or the charge was for a civil offense, the petitioner shall be entitled, in the  
5724 absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and  
5725 court records relating to the *arrest, charge, conviction, adjudication, or civil offense* and the court shall  
5726 enter an order of expungement. If the attorney for the Commonwealth of the county or city in which the  
5727 petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object to  
5728 the petition and (ii) when the *arrest, charge, conviction, or adjudication* to be expunged is a felony,  
5729 stipulates in such written notice that the continued existence and possible dissemination of information  
5730 relating to the arrest of the petitioner causes or may cause circumstances ~~which~~ *that* constitute a  
5731 manifest injustice to the petitioner, the court may enter an order of expungement without conducting a  
5732 hearing.

5733 G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the  
5734 decision of the court may appeal, as provided by law in civil cases.

5735 H. Notwithstanding any other provision of this section, when the charge is dismissed because the  
5736 court finds that the person arrested or charged is not the person named in the summons, warrant,  
5737 indictment or presentment, the court dismissing the charge shall, upon motion of the person improperly  
5738 arrested or charged, enter an order requiring expungement of the police and court records relating to the  
5739 charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to  
5740 this subsection and shall be accompanied by the complete set of the petitioner's fingerprints filed with  
5741 his petition. Upon the entry of such order, it shall be treated as provided in subsection K.

5742 I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-402  
5743 of an absolute pardon for the commission of a crime that a person did not commit, the court shall enter  
5744 an order requiring expungement of the police and court records relating to the charge and conviction.  
5745 Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon  
5746 the entry of such order, it shall be treated as provided in subsection K.

5747 J. Upon receiving a copy of a writ vacating a conviction pursuant to § 19.2-327.5 or 19.2-327.13, the  
5748 court shall enter an order requiring expungement of the police and court records relating to the charge  
5749 and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this  
5750 subsection. Upon the entry of the order, it shall be treated as provided in subsection K.

5751 K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such  
5752 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations  
5753 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of  
5754 such records shall be effected.

5755 L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth.  
5756 If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such  
5757 costs paid by the petitioner.

5758 M. Any order entered where (i) the court or parties failed to strictly comply with the procedures set  
5759 forth in this section or (ii) the court enters an order of expungement contrary to law, shall be voidable  
5760 upon motion and notice made within three years of the entry of such order.

5761 **§ 19.2-392.2:1. Former marijuana offenses; automatic expungement.**

5762 A. *Records relating to the arrest, charge, conviction, adjudication, or civil offense of a person for a*  
5763 *misdemeanor violation of former § 18.2-248.1 or a violation of former § 18.2-250.1, including any*  
5764 *violation charged under either section which charge was deferred and dismissed, shall be expunged no*  
5765 *later than (i) July 1, 2022, or (ii) if, on July 1, 2022, the person who is the subject of the arrest,*  
5766 *criminal charge, conviction, or civil offense has not completed all terms of sentencing and probation,*  
5767 *including satisfaction of all court costs and fines and all orders of restitution, three months after the*  
5768 *date of completion of all terms of sentencing and probation.*

5769 B. *The Department of State Police shall determine which offenses in the Central Criminal Records*  
5770 *Exchange meet the criteria for automatic expungement set forth in subsection A. The Department of*  
5771 *State Police shall provide an electronic list, on at least a monthly basis, of all offenses that meet the*  
5772 *criteria for automatic expungement to the Executive Secretary of the Supreme Court and to any circuit*  
5773 *court clerk who maintains a case management system that interfaces with the Department of State*  
5774 *Police under subsection B of § 17.1-502. The Executive Secretary, on at least a monthly basis, shall*  
5775 *provide an electronic list of all offenses that meet the criteria for automatic expungement to the clerk of*  
5776 *each circuit court in the jurisdiction where the case was finalized, if such circuit court clerk participates*  
5777 *in the case management system maintained by the Executive Secretary.*

5778 C. *Upon receipt of the electronic list provided under subsection B, on at least a monthly basis, the*



clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter such order directing that the offenses that meet the criteria for automatic expungement be automatically expunged under the process set forth by the Department of State Police pursuant to rules and regulations adopted pursuant to § 9.1-134. Such order shall contain the names of the persons charged with or convicted of such offenses.

D. The clerk of each circuit court shall provide an electronic copy of any order entered under subsection C to the Department of State Police on at least a monthly basis. Upon receipt of such order, the Department of State Police shall proceed as set forth in § 19.2-392.2.

**§ 22.1-277.08. Expulsion of students for certain drug offenses.**

A. School boards shall expel from school attendance any student whom such school board has determined, in accordance with the procedures set forth in this article, to have brought a controlled substance, or imitation controlled substance, or ~~marijuana~~ as defined in § 18.2-247 or ~~marijuana~~ as defined in § 3.2-4122 onto school property or to a school-sponsored activity. A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation, that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article. Nothing in this section shall be construed to require a student's expulsion regardless of the facts of the particular situation.

B. Each school board shall revise its standards of student conduct to incorporate the requirements of this section no later than three months after the date on which this act becomes effective.

**§ 22.1-315. Grounds and procedure for suspension.**

A. A teacher or other public school employee, whether full-time or part-time, permanent, or temporary, may be suspended for good and just cause when the safety or welfare of the school division or the students therein is threatened or when the teacher or school employee has been charged by summons, warrant, indictment or information with the commission of a felony; a misdemeanor involving (i) sexual assault as established in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, (ii) obscenity and related offenses as established in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, (iii) drugs as established in Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of Title 3.2 or Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (iv) moral turpitude, or (v) the physical or sexual abuse or neglect of a child; or an equivalent offense in another state. Except when a teacher or school employee is suspended because of being charged by summons, warrant, indictment or information with the commission of one of the ~~above-listed~~ foregoing criminal offenses, a division superintendent or appropriate central office designee shall not suspend a teacher or school employee for longer than ~~sixty~~ 60 days and shall not suspend a teacher or school employee for a period in excess of five days unless such teacher or school employee is advised in writing of the reason for the suspension and afforded an opportunity for a hearing before the school board in accordance with §§ 22.1-311 and 22.1-313, if applicable. Any teacher or other school employee so suspended shall continue to receive his ~~or her~~ then applicable ~~then-applicable~~ salary unless and until the school board, after a hearing, determines otherwise. No teacher or school employee shall be suspended solely on the basis of his ~~or her~~ refusal to submit to a polygraph examination requested by the school board.

B. Any school employee suspended because of being charged by summons, warrant, information or indictment with one of the offenses listed in subsection A may be suspended with or without pay. In the event any school employee is suspended without pay, an amount equal to his ~~or her~~ salary while on suspended status shall be placed in an interest-bearing demand escrow account. Upon being found not guilty of one of the offenses listed in subsection A or upon the dismissal or nolle prosequi of the charge, such school employee shall be reinstated with all unpaid salary and accrued interest from the escrow account, less any earnings received by the school employee during the period of suspension, but in no event shall such payment exceed one year's salary.

C. In the event any school employee is found guilty by an appropriate court of one of the offenses listed in subsection A and, after all available appeals have been exhausted and such conviction is upheld, all funds in the escrow account shall be repaid to the school board.

D. No school employee shall have his ~~or her~~ insurance benefits suspended or terminated because of such suspension in accordance with this section.

E. Nothing in this section shall be construed to limit the authority of a school board to dismiss or place on probation a teacher or school employee pursuant to Article 3 (§ 22.1-306 et seq.) ~~of this chapter.~~

F. For the purposes of this section, the placing of a school employee on probation pursuant to the terms and conditions of § 18.2-251 shall be deemed a finding of guilt.

**5840 § 24.2-233. Removal of elected and certain appointed officers by courts.**

**5841** Upon petition, a circuit court may remove from office any elected officer or officer who has been  
**5842** appointed to fill an elective office, residing within the jurisdiction of the court:

**5843** 1. For neglect of duty, misuse of office, or incompetence in the performance of duties when that  
**5844** neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse  
**5845** effect upon the conduct of the office;

**5846** 2. Upon conviction of a misdemeanor pursuant to *Article 7 (§ 3.2-4159 et seq.) of Chapter 41.2 of*  
**5847** *Title 3.2 or Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2*  
**5848** and after all rights of appeal have terminated involving the:

**5849** a. Manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or  
**5850** distribute a controlled substance or marijuana;

**5851** b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug  
**5852** paraphernalia *or marijuana paraphernalia*; or

**5853** c. Possession of any controlled substance or marijuana and such conviction under subdivision a, b, or  
**5854** c has a material adverse effect upon the conduct of such office;

**5855** 3. Upon conviction, and after all rights of appeal have terminated, of a misdemeanor involving a  
**5856** "hate crime" as that term is defined in § 52-8.5 when the conviction has a material adverse effect upon  
**5857** the conduct of such office; or

**5858** 4. Upon conviction, and after all rights of appeal have terminated, of sexual battery in violation of  
**5859** § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, peeping or spying into  
**5860** dwelling or enclosure in violation of § 18.2-130, consensual sexual intercourse with a child 15 years of  
**5861** age or older in violation of § 18.2-371, or indecent exposure of himself or procuring another to expose  
**5862** himself in violation of § 18.2-387, and such conviction has a material adverse effect upon the conduct  
**5863** of such office.

**5864** The petition must be signed by a number of registered voters who reside within the jurisdiction of  
**5865** the officer equal to ~~ten~~ 10 percent of the total number of votes cast at the last election for the office that  
**5866** the officer holds.

**5867** Any person removed from office under the provisions of subdivision 2, 3, or 4 may not be  
**5868** subsequently subject to the provisions of this section for the same criminal offense.

**5869 § 37.2-314. Background check required.**

**5870** A. As a condition of employment, the Department shall require any applicant who (i) accepts a  
**5871** position of employment at a state facility and was not employed by that state facility prior to July 1,  
**5872** 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the  
**5873** Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to  
**5874** fingerprinting and provide personal descriptive information to be forwarded along with the applicant's  
**5875** fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)  
**5876** for the purpose of obtaining national criminal history record information regarding the applicant.

**5877** B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated  
**5878** employment persons who have been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of  
**5879** the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the  
**5880** definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for  
**5881** employment or (b) if such person continues on probation or parole or has failed to pay required court  
**5882** costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

**5883** C. Notwithstanding the provisions of subsection B, the Department may hire for compensated  
**5884** employment at an adult substance abuse or adult mental health treatment program a person who was  
**5885** convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or  
**5886** subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of  
**5887** § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any  
**5888** offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense  
**5889** pursuant to *subsection B or C of § 3.2-4170 or subsection H1 or H2 of § 18.2-248*; or any substantially  
**5890** similar offense under the laws of another jurisdiction, if the Department determines, based upon a  
**5891** screening assessment, that the criminal behavior was substantially related to the applicant's substance  
**5892** abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to  
**5893** individuals receiving services based on his criminal history background and his substance abuse or  
**5894** mental illness history.

**5895** D. The Department and a screening contractor designated by the Department shall screen applicants  
**5896** who meet the criteria set forth in subsection C to assess whether the applicants have been rehabilitated  
**5897** successfully and are not a risk to individuals receiving services based on their criminal history  
**5898** backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the  
**5899** applicant shall have completed all prison or jail terms; shall not be under probation or parole  
**5900** supervision; shall have no pending charges in any locality; shall have paid all fines, restitution, and  
**5901** court costs for any prior convictions; and shall have been free of parole or probation for at least five

years for all convictions. In addition to any supplementary information the Department or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the Department decides to pay the cost.

E. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

F. Those applicants listed in clause (i) of subsection A also shall provide to the state facility or Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on them.

G. The Board may adopt regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department or state facility decides to pay the cost.

#### **§ 37.2-416. Background checks required.**

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same licensee licensed pursuant to this article or (b) new employment in any mental health or developmental services direct care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts employment in any direct care position, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall:

1. Hire for compensated employment any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;

2. Approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of (i)

5963 any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii)  
5964 any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five  
5965 years prior to the application date to be a sponsored residential service provider or (b) if such applicant  
5966 continues on probation or parole or has failed to pay required court costs for such offense set forth in  
5967 clause (iv) of the definition of barrier crime in § 19.2-392.02; or

5968 3. Permit to enter into a shared living arrangement with a person receiving medical assistance  
5969 services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause  
5970 (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause  
5971 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a  
5972 shared living arrangement or (b) if such person continues on probation or parole or has failed to pay  
5973 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in  
5974 § 19.2-392.02.

5975 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no  
5976 record exists, shall submit a report to the requesting authorized officer or director of a provider licensed  
5977 pursuant to this article. If any applicant is denied employment because of information appearing on the  
5978 criminal history record and the applicant disputes the information upon which the denial was based, the  
5979 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures  
5980 for obtaining a copy of the criminal history record from the FBI. The information provided to the  
5981 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated  
5982 except as provided in this section.

5983 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
5984 at adult substance abuse or adult mental health treatment programs a person who was convicted of any  
5985 violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of §  
5986 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89,  
5987 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in  
5988 clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to *subsections*  
5989 *B or C of § 3.2-4170* or subsections H1 and H2 of § 18.2-248; or any substantially similar offense under  
5990 the laws of another jurisdiction, if the hiring provider determines, based upon a screening assessment,  
5991 that the criminal behavior was substantially related to the applicant's substance abuse or mental illness  
5992 and that the person has been successfully rehabilitated and is not a risk to individuals receiving services  
5993 based on his criminal history background and his substance abuse or mental illness history.

5994 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
5995 at adult substance abuse treatment facilities a person who has been convicted of not more than one  
5996 offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another  
5997 jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in  
5998 Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more  
5999 than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a  
6000 screening assessment, that the criminal behavior was substantially related to the applicant's substance  
6001 abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving  
6002 services based on his criminal history background and his substance abuse history.

6003 E. The hiring provider and a screening contractor designated by the Department shall screen  
6004 applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have  
6005 been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal  
6006 history backgrounds and substance abuse or mental illness histories. To be eligible for such screening,  
6007 the applicant shall have completed all prison or jail terms, shall not be under probation or parole  
6008 supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court  
6009 costs for any prior convictions, and shall have been free of parole or probation for at least five years for  
6010 all convictions. In addition to any supplementary information the provider or screening contractor may  
6011 require or the applicant may wish to present, the applicant shall provide to the screening contractor a  
6012 statement from his most recent probation or parole officer, if any, outlining his period of supervision  
6013 and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The  
6014 cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

6015 F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated  
6016 employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a  
6017 shared living arrangement persons who have been convicted of not more than one misdemeanor offense  
6018 under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction,  
6019 if 10 years have elapsed following the conviction, unless the person committed the offense while  
6020 employed in a direct care position. A provider may also approve a person as a sponsored residential  
6021 service provider if (a) any adult living in the home of an applicant or (b) any person employed by the  
6022 applicant to provide services in the home in which sponsored residential services are provided has been  
6023 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially  
6024 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,

unless the person committed the offense while employed in a direct care position.

G. Providers licensed pursuant to this article also shall require, as a condition of employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

J. Notwithstanding any other provision of law, a provider licensed pursuant to this article that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

**§ 37.2-506. Background checks required.**

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same community services board or (b) new employment in any mental health or developmental services direct care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every community services board shall require (i) any applicant who accepts employment in any direct care position with the community services board, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, or permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver persons who have been convicted of (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, the application date to be a sponsored residential service provider, or entering into a shared living arrangement or (2) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the community services board. If any applicant is denied employment because of information appearing on

his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to *subsection B or C of § 3.2-4170* or subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse treatment programs a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a shared living arrangement persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A community services board may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Community services boards also shall require, as a condition of employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the community services board decides to pay the cost.

I. Notwithstanding any other provision of law, a community services board that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto

may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

J. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

**§ 48-17. Enjoining nuisances involving illegal drug transactions.**

The attorney for the Commonwealth, or any citizen of the county, city, or town, where such a nuisance as is described in § 3.2-4190 or 18.2-258 exists, may, in addition to any other remedies and punishment, maintain a suit in equity in the name of the Commonwealth to enjoin the same. The attorney for the Commonwealth shall not be required to prosecute any suit brought by a citizen under this section. In every case where the bill charges, on the knowledge or belief of the complainant, and is sworn to by two witnesses, that a nuisance exists as described in § 3.2-4190 or 18.2-258, a temporary injunction may be granted as soon as the bill is presented to the court provided reasonable notice has been given. The injunction shall enjoin and restrain any owners, tenants, their agents, employees, and any other person from contributing to or maintaining the nuisance and may impose such other requirements as the court deems appropriate. If, after a hearing, the court finds that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it shall continue the injunction against such persons or premises for such period of time as it deems appropriate, with the right to dissolve the injunction upon a proper showing by the owner of the premises.

**§ 52-8.1:1. Powers and duties of a drug law enforcement and investigation division.**

A. In addition to any other powers and duties which may be provided by statute or otherwise, it shall be the duty of a division for drug law enforcement and investigation to enforce the laws of the Commonwealth and conduct investigations related to violations of *Article 7* (§ 3.2-4159 et seq.) of *Chapter 41.2 of Title 3.2* and *Articles 1* (§ 18.2-247 et seq.) and *1.1* (§ 18.2-265.1 et seq.) of *Chapter 7 of Title 18.2* or when requested pursuant to the provisions of § 52-8.1.

B. The Superintendent may request and receive, from any federal, state or local agency, cooperation and assistance to aid such division in the performance of its duties, including temporary assignment of personnel which may be necessary to carry out the performance of its functions; provided that the agency consents to the assignment. Consent may not be unreasonably withheld. Any assistance or appropriation given to such division shall be used for the primary purpose of enforcing laws and conducting investigations related to violations of *Article 7* (§ 3.2-4159 et seq.) of *Chapter 41.2 of Title 3.2* and *Articles 1* (§ 18.2-247 et seq.) and *1.1* (§ 18.2-265.1 et seq.) of *Chapter 7 of Title 18.2*. Such division shall be a party to any anti-crime partnership agreement established pursuant to § 2.2-117 and may assist any locality declared an Intensified Drug Enforcement Jurisdiction pursuant to § 15.2-1715.

C. Such division may enter into agreements with other states pertaining to the enforcement of *Article 7* (§ 3.2-4159 et seq.) of *Chapter 41.2 of Title 3.2* and *Articles 1* (§ 18.2-247 et seq.) and *1.1* (§ 18.2-265.1 et seq.) of *Chapter 7 of Title 18.2* across state boundaries. Such division may share information with law-enforcement agencies in other states as is necessary to carry out its work.

**§ 52-35. Witness protection program established.**

The Superintendent of State Police may establish and maintain within the Department of State Police a witness protection program to temporarily relocate or otherwise protect witnesses and their families who may be in danger because of their cooperation with the investigation and prosecution of serious violent crimes, felony violations of § 18.2-248, and violations of §§ 3.2-4170, 18.2-57.2, 18.2-67.5:1, 18.2-67.5:2, and 18.2-67.5:3. The Superintendent may make the services of the program available to law-enforcement and criminal justice agencies of all counties, cities, and towns, and of the Commonwealth, pursuant to regulations promulgated by the Superintendent under the Administrative Process Act. (§ 2.2-4000 et seq.).

**§ 53.1-220.1. Transfer of prisoners convicted of designated illegal acts.**

With the consent of the appropriate state authorities, the Immigration and Naturalization Service may, following notification under § 19.2-294.2, take physical custody of and responsibility for any alien convicted of any (i) felony offense involving murder, rape, robbery, burglary, larceny, extortion, or abduction, or (ii) illegal drug violation designated as a felony under *Article 7* (§ 3.2-4159 et seq.) of *Chapter 41.2 of Title 3.2* or *Article 1* (§ 18.2-247 et seq.) of *Chapter 7 of Title 18.2*. The director, sheriff or other official in charge of the facility in which such alien is incarcerated may enter into an agreement, which includes provisions relating to reimbursement, with the Immigration and Naturalization Service to retain custody or supervision of such alien until he is deported or until other mutually

6209 satisfactory arrangements are made to transfer custody of such alien to the Service.

6210 **§ 53.1-231.2. Restoration of the civil right to be eligible to register to vote to certain persons.**

6211 This section shall apply to any person who is not a qualified voter because of a felony conviction,  
6212 who seeks to have his right to register to vote restored and become eligible to register to vote, and who  
6213 meets the conditions and requirements set out in this section.

6214 Any person, other than a person (i) convicted of a violent felony as defined in § 19.2-297.1 or in  
6215 subsection C of § 17.1-805 and any crime ancillary thereto; (ii) convicted of a felony pursuant to §§  
6216 § 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4168, 3.2-4170, 3.2-4172, 3.2-4175, 3.2-4191, 18.2-248,  
6217 18.2-248.01, ~~18.2-248.1~~, 18.2-255, 18.2-255.2 or § 18.2-258.02; or (iii) convicted of a felony pursuant  
6218 to § 24.2-1016, may petition the circuit court of the county or city in which he was convicted of a  
6219 felony, or the circuit court of the county or city in which he presently resides, for restoration of his civil  
6220 right to be eligible to register to vote through the process set out in this section. On such petition, the  
6221 court may approve the petition for restoration to the person of his right if the court is satisfied from the  
6222 evidence presented that the petitioner has completed, five or more years previously, service of any  
6223 sentence and any modification of sentence including probation, parole, and suspension of sentence; that  
6224 the petitioner has demonstrated civic responsibility through community or comparable service; and that  
6225 the petitioner has been free from criminal convictions, excluding traffic infractions, for the same period.

6226 If the court approves the petition, it shall so state in an order, provide a copy of the order to the  
6227 petitioner, and transmit its order to the Secretary of the Commonwealth. The order shall state that the  
6228 petitioner's right to be eligible to register to vote may be restored by the date that is 90 days after the  
6229 date of the order, subject to the approval or denial of restoration of that right by the Governor. The  
6230 Secretary of the Commonwealth shall transmit the order to the Governor who may grant or deny the  
6231 petition for restoration of the right to be eligible to register to vote approved by the court order. The  
6232 Secretary of the Commonwealth shall send, within 90 days of the date of the order, to the petitioner at  
6233 the address stated on the court's order, a certificate of restoration of that right or notice that the  
6234 Governor has denied the restoration of that right. The Governor's denial of a petition for the restoration  
6235 of voting rights shall be a final decision and the petitioner shall have no right of appeal. The Secretary  
6236 shall notify the court and the State Board of Elections in each case of the restoration of the right or  
6237 denial of restoration by the Governor.

6238 On receipt of the certificate of restoration of the right to register to vote from the Secretary of the  
6239 Commonwealth, the petitioner, who is otherwise a qualified voter, shall become eligible to register to  
6240 vote.

6241 **§ 54.1-2903. What constitutes practice; advertising in connection with medical practice.**

6242 A. Any person shall be regarded as practicing the healing arts who actually engages in such practice  
6243 as defined in this chapter, or who opens an office for such purpose, or who advertises or announces to  
6244 the public in any manner a readiness to practice or who uses in connection with his name the words or  
6245 letters "Doctor," "Dr.," "M.D.," "D.O.," "D.P.M.," "D.C.," "Healer," "N.P.," or any other title, word,  
6246 letter or designation intending to designate or imply that he is a practitioner of the healing arts or that  
6247 he is able to heal, cure or relieve those suffering from any injury, deformity or disease.

6248 Signing a birth or death certificate, or signing any statement certifying that the person so signing has  
6249 rendered professional service to the sick or injured, or signing or issuing a prescription for drugs or  
6250 other remedial agents, shall be prima facie evidence that the person signing or issuing such writing is  
6251 practicing the healing arts within the meaning of this chapter except where persons other than physicians  
6252 are required to sign birth certificates.

6253 B. No person regulated under this chapter shall use the title "Doctor" or the abbreviation "Dr." in  
6254 writing or in advertising in connection with his practice unless he simultaneously uses words, initials, an  
6255 abbreviation or designation, or other language that identifies the type of practice for which he is  
6256 licensed. No person regulated under this chapter shall include in any advertisement a reference to  
6257 marijuana, as defined in § ~~18.2-247~~ 3.2-4122, unless such advertisement is for the treatment of addiction  
6258 or substance abuse. However, nothing in this subsection shall prevent a person from including in any  
6259 advertisement that such person is registered with the Board of Pharmacy to issue written certifications  
6260 for the use of cannabidiol oil or THC-A oil, as defined in § 54.1-3408.3.

6261 **§ 54.1-3408.3. Certification for use of cannabis oil for treatment.**

6262 A. As used in this section:

6263 "Cannabis oil" means any formulation of processed Cannabis plant extract, which may include oil  
6264 from industrial hemp extract acquired by a pharmaceutical processor pursuant to § 54.1-3442.6, or a  
6265 dilution of the resin of the Cannabis plant that contains at least five milligrams of cannabidiol (CBD) or  
6266 tetrahydrocannabinolic acid (THC-A) and no more than 10 milligrams of delta-9-tetrahydrocannabinol  
6267 per dose. "Cannabis oil" does not include industrial hemp, as defined in § 3.2-4112, that is grown, dealt,  
6268 or processed in compliance with state or federal law, unless it has been acquired and formulated with  
6269 cannabis plant extract by a pharmaceutical processor.

6270 "Practitioner" means a practitioner of medicine or osteopathy licensed by the Board of Medicine, a



physician assistant licensed by the Board of Medicine, or a nurse practitioner jointly licensed by the Board of Medicine and the Board of Nursing.

"Registered agent" means an individual designated by a patient who has been issued a written certification, or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, designated by such patient's parent or legal guardian, and registered with the Board pursuant to subsection G.

B. A practitioner in the course of his professional practice may issue a written certification for the use of cannabis oil for treatment or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use. The practitioner shall use his professional judgment to determine the manner and frequency of patient care and evaluation and may employ the use of telemedicine consistent with federal requirements for the prescribing of Schedule II through V controlled substances.

C. The written certification shall be on a form provided by the Office of the Executive Secretary of the Supreme Court developed in consultation with the Board of Medicine. Such written certification shall contain the name, address, and telephone number of the practitioner, the name and address of the patient issued the written certification, the date on which the written certification was made, and the signature of the practitioner. Such written certification issued pursuant to subsection B shall expire no later than one year after its issuance unless the practitioner provides in such written certification an earlier expiration.

D. No practitioner shall be prosecuted under § ~~18.2-248~~ or ~~18.2-248.1~~ *3.2-4164, 3.2-4166, 3.2-4167, or 3.2-4170* for dispensing or distributing cannabis oil for the treatment or to alleviate the symptoms of a patient's diagnosed condition or disease pursuant to a written certification issued pursuant to subsection B. Nothing in this section shall preclude the Board of Medicine from sanctioning a practitioner for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

E. A practitioner who issues a written certification to a patient pursuant to this section shall register with the Board. The Board shall, in consultation with the Board of Medicine, set a limit on the number of patients to whom a practitioner may issue a written certification.

F. A patient who has been issued a written certification shall register with the Board or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, a patient's parent or legal guardian shall register and shall register such patient with the Board.

G. A patient, or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, such patient's parent or legal guardian, may designate an individual to act as his registered agent for the purposes of receiving cannabis oil pursuant to a valid written certification. Such designated individual shall register with the Board. The Board may set a limit on the number patients for whom any individual is authorized to act as a registered agent.

H. The Board shall promulgate regulations to implement the registration process. Such regulations shall include (i) a mechanism for sufficiently identifying the practitioner issuing the written certification, the patient being treated by the practitioner, his registered agent, and, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, the patient's parent or legal guardian; (ii) a process for ensuring that any changes in the information are reported in an appropriate timeframe; and (iii) a prohibition for the patient to be issued a written certification by more than one practitioner during any given time period.

I. Information obtained under the registration process shall be confidential and shall not be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, reasonable access to registry information shall be provided to (i) the Chairmen of the House Committee for Courts of Justice and the Senate Committee on the Judiciary, (ii) state and federal agencies or local law enforcement for the purpose of investigating or prosecuting a specific individual for a specific violation of law, (iii) licensed practitioners or pharmacists for the purpose of providing patient care and drug therapy management and monitoring of drugs obtained by a registered patient, (iv) a pharmaceutical processor or cannabis dispensing facility involved in the treatment of a registered patient, or (v) a registered patient, his registered agent, or, if such patient is a minor or an incapacitated adult as defined in § 18.2-369, the patient's parent or legal guardian, but only with respect to information related to such registered patient.

#### **§ 54.1-3442.6. Permit to operate pharmaceutical processor or cannabis dispensing facility.**

A. No person shall operate a pharmaceutical processor or a cannabis dispensing facility without first obtaining a permit from the Board. The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmaceutical processor or cannabis dispensing facility. The Board shall establish an application fee and other general requirements for such application.

B. Each permit shall expire annually on a date determined by the Board in regulation. The number of permits that the Board may issue or renew in any year is limited to one pharmaceutical processor and

6332 up to five cannabis dispensing facilities for each health service area established by the Board of Health.  
6333 Permits shall be displayed in a conspicuous place on the premises of the pharmaceutical processor and  
6334 cannabis dispensing facility.

6335 C. The Board shall adopt regulations establishing health, safety, and security requirements for  
6336 pharmaceutical processors and cannabis dispensing facilities. Such regulations shall include requirements  
6337 for (i) physical standards; (ii) location restrictions; (iii) security systems and controls; (iv) minimum  
6338 equipment and resources; (v) recordkeeping; (vi) labeling and packaging; (vii) quarterly inspections;  
6339 (viii) processes for safely and securely dispensing and delivering in person cannabis oil to a registered  
6340 patient, his registered agent, or, if such patient is a minor or an incapacitated adult as defined in  
6341 § 18.2-369, such patient's parent or legal guardian; (ix) dosage limitations, which shall provide that each  
6342 dispensed dose of cannabis oil not exceed 10 milligrams of delta-9-tetrahydrocannabinol; (x) a process  
6343 for the wholesale distribution of and the transfer of cannabis oil products between pharmaceutical  
6344 processors and between a pharmaceutical processor and a cannabis dispensing facility; (xi) an allowance  
6345 for the sale of devices for administration of dispensed products; (xii) an allowance for the use and  
6346 distribution of inert product samples containing no cannabinoids for patient demonstration exclusively at  
6347 the pharmaceutical processor or cannabis dispensing facility, and not for further distribution or sale,  
6348 without the need for a written certification; and (xiii) a process for acquiring oil from industrial hemp  
6349 extract and formulating such oil extract with Cannabis plant extract into allowable dosages of cannabis  
6350 oil. The Board shall also adopt regulations for pharmaceutical processors that include requirements for  
6351 (a) processes for safely and securely cultivating Cannabis plants intended for producing cannabis oil; (b)  
6352 a maximum number of marijuana plants a pharmaceutical processor may possess at any one time; (c) the  
6353 secure disposal of plant remains; and (d) a process for registering cannabis oil products.

6354 D. The Board shall require that, after processing and before dispensing cannabis oil, a pharmaceutical  
6355 processor shall make a sample available from each homogenized batch of product for testing by an  
6356 independent laboratory located in Virginia meeting Board requirements. A valid sample size for testing  
6357 shall be determined by each laboratory and may vary due to sample matrix, analytical method, and  
6358 laboratory-specific procedures. A minimum sample size of 0.5 percent of individual units for dispensing  
6359 or distribution from each homogenized batch is required to achieve a representative sample for analysis.

6360 E. A laboratory testing samples for a pharmaceutical processor shall obtain a controlled substances  
6361 registration certificate pursuant to § 54.1-3423 and shall comply with quality standards established by  
6362 the Board in regulation.

6363 F. Every pharmaceutical processor or cannabis dispensing facility shall be under the personal  
6364 supervision of a licensed pharmacist on the premises of the pharmaceutical processor or cannabis  
6365 dispensing facility. A pharmacist in charge of a pharmaceutical processor may authorize certain  
6366 employee access to secured areas designated for cultivation and other areas approved by the Board. No  
6367 pharmacist shall be required to be on the premises during such authorized access. The  
6368 pharmacist-in-charge shall ensure security measures are adequate to protect the cannabis from diversion  
6369 at all times.

6370 G. The Board shall require an applicant for a pharmaceutical processor or cannabis dispensing  
6371 facility permit to submit to fingerprinting and provide personal descriptive information to be forwarded  
6372 along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of  
6373 Investigation for the purpose of obtaining criminal history record information regarding the applicant.  
6374 The cost of fingerprinting and the criminal history record search shall be paid by the applicant. The  
6375 Central Criminal Records Exchange shall forward the results of the criminal history background check to  
6376 the Board or its designee, which shall be a governmental entity.

6377 H. In addition to other employees authorized by the Board, a pharmaceutical processor may employ  
6378 individuals who may have less than two years of experience (i) to perform cultivation-related duties  
6379 under the supervision of an individual who has received a degree in horticulture or a certification  
6380 recognized by the Board or who has at least two years of experience cultivating plants and (ii) to  
6381 perform extraction-related duties under the supervision of an individual who has a degree in chemistry  
6382 or pharmacology or at least two years of experience extracting chemicals from plants.

6383 I. A pharmaceutical processor to whom a permit has been issued by the Board may establish up to  
6384 five cannabis dispensing facilities for the dispensing of cannabis oil that has been cultivated and  
6385 produced on the premises of a pharmaceutical processor permitted by the Board. Each cannabis  
6386 dispensing facility shall be located within the same health service area as the pharmaceutical processor.

6387 J. No person who has been convicted of (i) a felony under the laws of the Commonwealth or another  
6388 jurisdiction or (ii) within the last five years, any *criminal* offense in violation of *Article 7* (§ 3.2-4159 *et*  
6389 *seq.*) of *Chapter 41.2 of Title 3.2* or *Article 1* (§ 18.2-247 *et seq.*) or *Article 1.1* (§ 18.2-265.1 *et seq.*) of  
6390 *Chapter 7 of Title 18.2* or a substantially similar offense under the laws of another jurisdiction shall be  
6391 employed by or act as an agent of a pharmaceutical processor or cannabis dispensing facility.

6392 K. Every pharmaceutical processor or cannabis dispensing facility shall adopt policies for  
6393 pre-employment drug screening and regular, ongoing, random drug screening of employees.

L. A pharmacist at the pharmaceutical processor and the cannabis dispensing facility shall determine the number of pharmacy interns, pharmacy technicians and pharmacy technician trainees who can be safely and competently supervised at one time; however, no pharmacist shall supervise more than six persons performing the duties of a pharmacy technician at one time.

M. Any person who proposes to use an automated process or procedure during the production of cannabis oil that is not otherwise authorized in law or regulation or at a time when a pharmacist will not be on-site may apply to the Board for approval to use such process or procedure pursuant to subsections B through E of § 54.1-3307.2.

N. A pharmaceutical processor may acquire oil from industrial hemp extract processed in Virginia, and in compliance with state or federal law, from a registered industrial hemp dealer or processor. A pharmaceutical processor may process and formulate such oil extract with cannabis plant extract into an allowable dosage of cannabis oil. Oil from industrial hemp acquired by a pharmaceutical processor is subject to the same third-party testing requirements that may apply to cannabis plant extract. Testing shall be performed by a laboratory located in Virginia and in compliance with state law. The industrial hemp dealer or processor shall provide such third-party testing results to the pharmaceutical processor before oil from industrial hemp may be acquired.

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

No agent or employee of a pharmaceutical processor or cannabis dispensing facility shall be prosecuted under ~~§ 18.2-248, 18.2-248.1, 3.2-4160, 3.2-4161, 3.2-4164, 3.2-4166, 3.2-4167, 3.2-4170, or 18.2-250, or 18.2-250.1~~ for possession or manufacture of marijuana or for possession, manufacture, or distribution of cannabis oil, subject to any civil penalty, denied any right or privilege, or subject to any disciplinary action by a professional licensing board if such agent or employee (i) possessed or manufactured such marijuana for the purposes of producing cannabis oil in accordance with the provisions of this article and Board regulations or (ii) possessed, manufactured, or distributed such cannabis oil in accordance with the provisions of this article and Board regulations.

**2. That §§ 18.2-248.1, 18.2-250.1, 18.2-251.1 through 18.2-251.1:3, and 19.2-389.3 of the Code of Virginia are repealed.**

**3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**