

21200479D

## SENATE BILL NO. 1443

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations  
on February 22, 2021)

(Patron Prior to Substitute—Senator Edwards)

A *BILL to amend and reenact §§ 3.2-4212, 4.1-302, 18.2-186.4, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255, and 18.2-255.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-303.03, relating to elimination of mandatory minimum sentences; modification of sentence to mandatory minimum term of confinement for felony offenses.*

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

**1. That §§ 3.2-4212, 4.1-302, 18.2-186.4, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255, and 18.2-255.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-303.03 as follows:**

**§ 3.2-4212. Penalties and other remedies.**

A. In addition to any other civil or criminal penalty or remedy provided by law, upon a determination that any person has violated § 3.2-4207 or any regulation adopted pursuant thereto, the Commissioner may revoke or suspend such person's privilege to purchase tax stamps at a discounted rate. Each stamp affixed and each offer to sell cigarettes in violation of § 3.2-4207 shall constitute a separate violation. Upon a determination of a violation of § 3.2-4207 or any regulations adopted pursuant thereto, the Commissioner may also impose a civil penalty in an amount not to exceed the greater of (i) 500 percent of the retail value of the cigarettes sold or (ii) \$5,000.

B. Any cigarettes that have been sold, offered for sale or possessed for sale in the Commonwealth, or imported for personal consumption in the Commonwealth, in violation of § 3.2-4207, shall be deemed contraband and may not be sold or offered for sale unless such cigarettes are listed in the Directory. Any such cigarettes that are sold or offered for sale when not included in the Directory shall be subject to confiscation and forfeiture. Any such confiscation and forfeiture shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, which shall apply mutatis mutandis; except that all such cigarettes so confiscated and forfeited shall be destroyed and not resold.

C. The Attorney General may seek an injunction to restrain a threatened or actual violation of § 3.2-4207, subsection A of § 3.2-4209, subsection B of § 3.2-4209, or subsection C of § 3.2-4209 by a stamping agent and to compel the stamping agent to comply with such provisions. In any action brought pursuant to this subsection in which the Commonwealth prevails, the Commonwealth shall be entitled to recover the reasonable costs of investigation, costs of the action and reasonable attorney fees.

D. It shall be unlawful for a person to (i) sell or distribute cigarettes or (ii) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the Commonwealth in violation of § 3.2-4207. A violation of this section involving less than 3,000 packages of cigarettes is a Class 1 misdemeanor. A violation of this section involving 3,000 or more packages of cigarettes is a Class 1 misdemeanor, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of 90 days.

**§ 4.1-302. Illegal sale of alcoholic beverages in general; penalty.**

If any person who is not licensed sells any alcoholic beverages except as permitted by this title, he shall be guilty of a Class 1 misdemeanor.

~~In the event of a second or subsequent conviction under this section, a jail sentence of no less than thirty days shall be imposed and in no case be suspended.~~

**§ 18.2-186.4. Use of a person's identity with the intent to coerce, intimidate, or harass; penalty.**

It shall be unlawful for any person, with the intent to coerce, intimidate, or harass another person, to publish the person's name or photograph along with identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of § 18.2-186.3, or identification of the person's primary residence address. Any person who violates this section is guilty of a Class 1 misdemeanor.

Any person who violates this section knowing or having reason to know that person is a law-enforcement officer, as defined in § 9.1-101, is guilty of a Class 6 felony. The sentence shall include a mandatory minimum term of confinement of six months.

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

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be 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.

C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its salts, isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction, be imprisoned for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a second conviction of such a violation, any such person may, in the discretion of the court or jury

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

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

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

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

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

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

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

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

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

183 derivatives of ecgonine or their salts have been removed;

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

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

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

188 3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains  
189 cocaine base;

190 4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

191 5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or  
192 more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers,  
193 or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1 million and  
194 imprisonment for 20 years to life; 20 years of which shall be a mandatory minimum sentence. Such  
195 mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have  
196 a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did not use  
197 violence or credible threats of violence or possess a firearm or other dangerous weapon in connection  
198 with the offense or induce another participant in the offense to do so; (iii) the offense did not result in  
199 death or serious bodily injury to any person; (iv) the person was not an organizer, leader, manager, or  
200 supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined  
201 in subsection I of this section; and (v) not later than the time of the sentencing hearing, the person has  
202 truthfully provided to the Commonwealth all information and evidence the person has concerning the  
203 offense or offenses that were part of the same course of conduct or of a common scheme or plan, but  
204 the fact that the person has no relevant or useful other information to provide or that the Commonwealth  
205 already is aware of the information shall not preclude a determination by the court that the defendant  
206 has complied with this requirement.

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

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

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

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

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

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

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

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

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

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

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

233 H2. Any person who was the principal or one of several principal administrators, organizers or  
234 leaders of a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross  
235 receipts during any 12-month period of its existence from the manufacture, importation, or distribution  
236 of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of  
237 isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give,  
238 distribute or possess with the intent to manufacture, sell, give or distribute the following during any  
239 12-month period of its existence:

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

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

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

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

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or  
 d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

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

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

5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be 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.

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

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

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

**§ 18.2-248.01. Transporting controlled substances 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 one ounce or more of cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance or five or more pounds of 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 nor more than 40 years imprisonment; ~~three years of which shall be a mandatory minimum term of imprisonment;~~ and a fine not to exceed \$1,000,000. A second or subsequent conviction hereunder shall be punishable by a ~~mandatory minimum~~ term of imprisonment of *not less than 10 years no more than 40 years;* ~~which shall be served consecutively with any other sentence.~~

**§ 18.2-248.03. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine; penalty.**

A. Notwithstanding any other provision of law, any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute 28 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a felony punishable by a fine of not more than \$500,000 and imprisonment for not less than five nor more than 40 years; ~~three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence.~~

B. Notwithstanding any other provision of law, any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute 227 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for not less than five years nor more than life; ~~five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence.~~

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

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

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

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

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

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

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

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

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

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

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

**§ 18.2-248.5. Illegal stimulants and steroids; penalty.**

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

A violation of subsection A shall be punishable by a term of imprisonment of not less than one year nor more than 10 years or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months or a fine of not more than \$20,000, either or both. ~~Any person violating the provisions of this subsection shall, upon conviction, be incarcerated for a mandatory minimum term of six months to be served consecutively with any other sentence.~~

B. It shall be unlawful for any person to knowingly sell or otherwise distribute, without prescription, to a minor any pill, capsule or tablet containing any combination of caffeine and ephedrine sulfate.

A violation of this subsection B shall be punishable as a Class 1 misdemeanor.

**§ 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 or marijuana to any person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any drug classified in Schedule I, II, III or IV or marijuana. Any person violating this provision shall upon conviction be imprisoned in a state correctional facility for a period not less than 10 nor more than 50 years, and fined not more than \$100,000. ~~Five years of the sentence imposed for a conviction under this section involving a Schedule I or II controlled substance or one ounce or more of marijuana shall be a mandatory minimum sentence. Two years of the sentence imposed for a conviction under this section involving less than one ounce of marijuana shall be a mandatory minimum sentence.~~

B. It shall be 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.

**§ 18.2-255.2. 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, 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 is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity;

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

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

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than \$100,000. ~~A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control Act (§ 54.1-3400 et seq.) or more than one-half ounce of marijuana shall be punished by a mandatory minimum term of imprisonment of one year to be served consecutively with any other sentence.~~ However, if such person proves that he sold such controlled substance or marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he is guilty of a Class 1 misdemeanor.

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

**§ 19.2-303.03. Modification of sentence to mandatory minimum term of confinement for certain felony offenses.**

A. Notwithstanding any other provision of law or rule of court, upon a petition of a person who (i) was convicted of a felony violation of §§ 18.2-186.4, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255, or 18.2-255.2 committed prior to July 1, 2021; (ii) was sentenced to a mandatory minimum term of confinement for such conviction; and (iii) remains incarcerated in a state or local correctional facility or secure facility, as defined in § 16.1-228, serving the sentence for such conviction or for a combination of any convictions requiring at least one mandatory minimum term of confinement, the circuit court that entered the original judgment or order may, at any time before the mandatory minimum term of confinement has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed, except that any modification of any term of confinement shall not exceed the original term of confinement imposed by the court.

B. The circuit court shall have the authority to conduct hearings on petitions for the modification of a mandatory minimum term of confinement pursuant to this section.

C. Any person eligible for modification of a mandatory minimum sentence under subsection A may file a petition for the assistance of counsel and a statement of indigency with the court on a form provided by the Supreme Court of Virginia. The court may summarily dismiss the petition if the person is not eligible for modification of a mandatory minimum sentence based on the criteria set forth in subsection A or if the court finds that the person is not entitled to representation by counsel under the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10. If the petition is not summarily dismissed and the court finds that the person is entitled to representation by counsel subject to the provisions of Article 3, the court shall appoint counsel to represent the petitioner.

D. The petition for modification of a mandatory minimum term of confinement shall be filed with the circuit court that entered the original judgment or order on a form provided by the Supreme Court of Virginia by the petitioner or by counsel for the petitioner. Such petition shall allege with specificity all of the following: (i) the petitioner's full name and date of birth; (ii) the felony offense for which the petitioner was convicted; (iii) the date on which such felony offense was alleged to have been committed; (iv) the date on which the petitioner was sentenced to serve a mandatory minimum term of confinement for such felony offense; (v) whether the petitioner remains incarcerated in a state or local correctional facility or secure facility serving the mandatory minimum term of confinement for such

felony offense, and if so, which facility; (vi) whether the petitioner has previously filed any other petition in accordance with this section; and (vii) the reason the petitioner is requesting a sentence modification and any information in support thereof. If the petitioner fails to submit a completed form, the circuit court may allow the petitioner to amend the petition to correct any deficiency.

E. The Commonwealth shall be made party to the proceeding. The petitioner shall provide a copy of the petition by delivery or by first-class mail, postage prepaid, to 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 within 30 days after it is received from the petitioner. Upon the motion of the attorney for the Commonwealth and for good cause shown, the court may allow the attorney for the Commonwealth up to an additional 30 days to respond to the petition.

F. The court shall review all petitions filed to determine whether the person is eligible for modification of a mandatory minimum sentence based on the criteria set forth in subsection A. If the person is not eligible for modification of a mandatory minimum sentence, the court shall dismiss the petition. If the person is eligible for modification of a mandatory minimum sentence, the court shall review any court records in the possession of the circuit court clerk related to such petition, including any additional information presented by the petitioner, presentence investigation report, discretionary sentencing guidelines, objection or answer by the attorney for the Commonwealth, and Victim Impact Statement.

G. Upon review of the petition and court records pursuant to subsection F, the court may dismiss the petition without a hearing. If the court dismisses the petition without a hearing, the court shall file with the record of the case a written explanation for such dismissal and shall provide a copy of such written explanation to the petitioner and to the attorney for the Commonwealth.

H. If the court does not dismiss the petition pursuant to subsection F or G, the court shall conduct a hearing after reasonable notice to both the petitioner and the attorney for the Commonwealth. The attorney for the Commonwealth shall make reasonable efforts to notify any victim, as defined in § 19.2-11.01, of such hearing. At such hearing, the court may dismiss the petition or, upon good cause shown by the petitioner, at any time before the mandatory minimum term of confinement has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed, except that any modification of any term of confinement shall not exceed the original term of confinement imposed by the court.

I. Subject to the provisions of § 19.2-295.3, the court shall permit any victim to testify at any hearing conducted pursuant to subsection H. Subject to the provisions of § 19.2-299.1, any victim may submit a Victim Impact Statement to be considered by the court at any hearing conducted pursuant to subsection H.

J. Following the entry of an order to modify a sentence pursuant to subsection H, the clerk of the circuit court shall cause a copy of such order to be forwarded to the Virginia Criminal Sentencing Commission, the Department of State Police, and the state or local correctional facility or secure facility where the petitioner is incarcerated within five days.

K. Upon entry of an order to dismiss a petition or to modify a sentence pursuant to this section, the court shall not be required to review or conduct a hearing on any subsequent petition filed by the same petitioner for the same offense.

L. The decision of a circuit court to dismiss a petition or to modify a sentence pursuant to this section shall not form the basis for relief in any habeas corpus or appellate proceeding, unless such decision was contrary to law.

M. No fee shall be charged for filing a petition under subsections C or D.

N. Any petition seeking a modification of a mandatory minimum term of confinement pursuant to this section shall be filed by July 1, 2024. Any petition filed after July 1, 2024, shall be dismissed by the court.

**2. That the Office of the Executive Secretary of the Supreme Court of Virginia shall develop form petitions in accordance with the provisions of § 19.2-303.03 of the Code of Virginia, as created by this act, and make such form petitions available on the Virginia Judicial System website by July 1, 2021.**

**3. That the Department of Corrections, the Department of Juvenile Justice, or the superintendent or sheriff of any state or local correctional facility or secure facility, respectively, shall provide a copy of the form petition developed by the Office of the Executive Secretary of the Supreme Court of Virginia pursuant to subsection C of § 19.2-303.03 of the Code of Virginia, as created by this act, to any person incarcerated in such state or local correctional facility or secure facility as of July 1, 2021, who is serving a mandatory minimum sentence for a felony violation of § 18.2-186.4, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255, or 18.2-255.2 of the Code of Virginia, as it was in effect on June 30, 2021, by July 31, 2021.**