

20101936D

**HOUSE BILL NO. 673**

Offered January 8, 2020

Prefiled January 6, 2020

*A BILL to amend and reenact §§ 8.01-226.5:2, 9.1-902, 17.1-805, 19.2-268.3, 19.2-386.35, 19.2-392.02, 40.1-79.01, 40.1-79.1, 40.1-113, 63.2-1530, and 63.2-1727 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-371.1:1, and to repeal § 40.1-103 of the Code of Virginia, relating to cruelty to children; penalty.*

Patron—Mullin

Referred to Committee for Courts of Justice

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

**1. That §§ 8.01-226.5:2, 9.1-902, 17.1-805, 19.2-268.3, 19.2-386.35, 19.2-392.02, 40.1-79.01, 40.1-79.1, 40.1-113, 63.2-1530, and 63.2-1727 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-371.1:1 as follows:**

**§ 8.01-226.5:2. Immunity of hospital and emergency medical services agency personnel for the acceptance of certain infants.**

Any personnel of a hospital or emergency medical services agency receiving a child under the circumstances described in the second paragraph of § 18.2-371, subdivision B 2 of § 18.2-371.1, or subsection B D of § ~~40.1-103~~ *18.2-371.1:1* shall be immune from civil liability or criminal prosecution for injury or other damage to the child unless such injury or other damage is the result of gross negligence or willful misconduct by such personnel.

**§ 9.1-902. Offenses requiring registration.**

A. For purposes of this chapter:

"Offense for which registration is required" includes:

1. Any offense listed in subsection B;
2. Criminal homicide;
3. Murder;
4. A sexually violent offense;

5. Any offense similar to those listed in subdivisions 1 through 4 under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof; and

6. Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

B. The offenses included under this subsection include any violation of, attempted violation of, or conspiracy to violate:

1. § 18.2-63 unless registration is required pursuant to subdivision E 1; § 18.2-64.1; former § 18.2-67.2:1; § 18.2-90 with the intent to commit rape; former § 18.1-88 with the intent to commit rape; any felony violation of § 18.2-346; any violation of subdivision (4) of § 18.2-355; any violation of subsection C of § 18.2-357.1; subsection B or C of § 18.2-374.1:1; former subsection D of § 18.2-374.1:1 as it was in effect from July 1, 1994, through June 30, 2007; former clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June 30, 2007; subsection B, C, or D of § 18.2-374.3; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5, or (iv) § 18.2-386.1.

If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section; subsection A of § 18.2-374.1:1; or a felony under § 18.2-67.5:1.

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, clause (i) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, § 18.2-366, or a felony violation of former § 18.1-191.

3. § 18.2-370.6.

4. If the offense was committed on or after July 1, 2016, and where the perpetrator is 18 years of age or older and the victim is under the age of 13, any violation of § 18.2-51.2.

5. If the offense was committed on or after July 1, 2016, any violation of § 18.2-356 punishable as a Class 3 felony or any violation of § 18.2-357 punishable as a Class 3 felony.

6. If the offense was committed on or after July 1, 2019, any felony violation of § 18.2-348 or 18.2-349.

C. "Criminal homicide" means a homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1 *or 18.2-371.1:1*, when the offenses arise out of the same incident.

INTRODUCED

HB673

59 D. "Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or  
60 § 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of  
61 age but under 18 years of age and the murder is related to an offense listed in this section or a violation  
62 of former § 18.1-21 where the victim is (a) under 15 years of age or (b) at least 15 years of age but  
63 under 18 years of age and the murder is related to an offense listed in this section.

64 E. "Sexually violent offense" means a violation of, attempted violation of, or conspiracy to violate:

65 1. Clause (ii) and (iii) of § 18.2-48, former § 18.1-38 with the intent to defile or, for the purpose of  
66 concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves  
67 assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished  
68 against the complaining witness's will, by force, or through the use of the complaining witness's mental  
69 incapacity or physical helplessness, or if the victim is under 13 years of age, subsection A of § 18.2-63  
70 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2,  
71 § 18.2-67.3, former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4  
72 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A  
73 and B of § 18.2-67.5, § 18.2-370, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214,  
74 § 18.2-370.1, or § 18.2-374.1;

75 2. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where  
76 the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,  
77 subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) of § 18.2-48, § 18.2-361,  
78 § 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed  
79 a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or  
80 more such offenses, provided that person had been at liberty between such convictions or adjudications;

81 3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any  
82 felony offense listed in this section. An offense listed under this subdivision shall be deemed a sexually  
83 violent offense only if the person has been convicted or adjudicated delinquent of any two or more such  
84 offenses, provided that the person had been at liberty between such convictions or adjudications; or

85 4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as  
86 described in § 1591 of Title 18, U.S.C.).

87 F. "Any offense listed in subsection B," "criminal homicide" as defined in this section, "murder" as  
88 defined in this section, and "sexually violent offense" as defined in this section includes (i) any similar  
89 offense under the laws of any foreign country or any political subdivision thereof or the United States or  
90 any political subdivision thereof or (ii) any offense for which registration in a sex offender and crimes  
91 against minors registry is required under the laws of the jurisdiction where the offender was convicted.

92 G. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a  
93 juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated  
94 delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in  
95 its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the  
96 offense require offender registration. In making its determination, the court shall consider all of the  
97 following factors that are relevant to the case: (i) the degree to which the delinquent act was committed  
98 with the use of force, threat, or intimidation, (ii) the age and maturity of the complaining witness, (iii)  
99 the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the  
100 offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the  
101 offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the  
102 case. The attorney for the Commonwealth may file such a motion at any time during which the offender  
103 is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any  
104 hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent  
105 the offender unless an attorney has been retained and appears on behalf of the offender or counsel has  
106 already been appointed.

107 H. Prior to entering judgment of conviction of an offense for which registration is required if the  
108 victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment,  
109 warrant, or information does not allege that the victim of the offense was a minor, physically helpless,  
110 or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the  
111 victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in  
112 § 18.2-67.10, and shall also determine the age of the victim at the time of the offense if it determines  
113 the victim to be a minor. When such a determination is required, the court shall advise the defendant of  
114 its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo  
115 contendere pursuant to § 19.2-296. If the court grants the defendant's motion to withdraw his plea of  
116 guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise.  
117 Failure to make such determination or so advise the defendant does not otherwise invalidate the  
118 underlying conviction.

119 **§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.**

120 A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which

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

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery shall be further increased by (i) 125 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 punishment 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 punishment of 40 years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any 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 § 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 violation of subsection C of § 18.2-371.1:1; 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.

**§ 18.2-371.1:1. Cruelty and injuries to children; penalty; abandoned infant.**

A. Any person employing or having the custody of any child who willfully or negligently causes or permits (i) the life of such child to be endangered or the health of such child to be injured; (ii) such child to be placed in a situation where his life, health, or morals may be endangered; or (iii) such child to be overworked is guilty of a Class 6 felony.

B. Any person employing or having the custody of any child who negligently causes or permits such child to be tortured physically or psychologically, tormented, mutilated, beaten, or cruelly treated is guilty of a Class 6 felony.

C. Any person employing or having the custody of any child who willfully causes or permits such child to be tortured physically or psychologically, tormented, mutilated, beaten, or cruelly treated is guilty of a Class 4 felony.

D. If a prosecution under this section is based solely on the accused parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this section 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 the first 14 days of the child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

**§ 19.2-268.3. Admissibility of statements by children in certain cases.**

A. As used in this section, "offense against children" means a violation or an attempt to violate § 18.2-31, 18.2-32, or 18.2-35, subsection A of § 18.2-47, § 18.2-48, 18.2-51, 18.2-51.2, 18.2-51.6, 18.2-52, 18.2-54.1, 18.2-54.2, 18.2-61, 18.2-67.1, 18.2-67.2, or 18.2-67.3, subsection B of § 18.2-346 if punishable as a felony, § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, subsection B of § 18.2-361, subsection B of § 18.2-366, § 18.2-370, 18.2-370.1, 18.2-371.1, 18.2-371.1:1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, or 18.2-374.4, or § 18.2-386.1 if punishable as a felony; ~~or § 40.1-103.~~

B. An out-of-court statement made by a child who is under 13 years of age at the time of trial or hearing who is the alleged victim of an offense against children describing any act directed against the child relating to such alleged offense shall not be excluded as hearsay under Rule 2:802 of the Rules of Supreme Court of Virginia if both of the following apply:

1. The court finds, in a hearing conducted prior to a trial, that the time, content, and totality of circumstances surrounding the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors:

- a. The child's personal knowledge of the event;
- b. The age, maturity, and mental state of the child;
- c. The credibility of the person testifying about the statement;
- d. Any apparent motive the child may have to falsify or distort the event, including bias or coercion;
- e. Whether the child was suffering pain or distress when making the statement; and
- f. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act; and

2. The child:

- a. Testifies; or
- b. Is declared by the court to be unavailable as a witness; when the child has been declared unavailable, such statement may be admitted pursuant to this section only if there is corroborative evidence of the act relating to an alleged offense against children.

C. At least 14 days prior to the commencement of the proceeding in which a statement will be offered as evidence, the party intending to offer the statement shall notify the opposing party, in writing, of the intent to offer the statement and shall provide or make available copies of the statement to be introduced.

D. This section shall not be construed to limit the admission of any statement offered under any other hearsay exception or applicable rule of evidence.

**§ 19.2-386.35. Seizure of property used in connection with certain offenses.**

All money, equipment, motor vehicles, and other personal and real property of any kind or character together with any interest or profits derived from the investment of such proceeds or other property that (i) was used in connection with the commission of, or in an attempt to commit, a violation of subsection B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, *18.2-371.1:1*, 40.1-29, *or* 40.1-100.2; ~~or 40.1-103~~; (ii) is traceable to the proceeds of some form of activity that violates subsection B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, *18.2-371.1:1*, 40.1-29, *or* 40.1-100.2; ~~or 40.1-103~~; or (iii) was used to or intended to be used to promote some form of activity that violates subsection B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, *18.2-371.1:1*, 40.1-29, *or* 40.1-100.2; ~~or 40.1-103~~ is subject to lawful seizure by a law-enforcement officer and subject to forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.). Any forfeiture action under this section shall be stayed until conviction, and property eligible for forfeiture pursuant to this section shall be forfeited only upon the entry of a final judgment of conviction for an offense listed in this section; if no such judgment is entered, all property seized pursuant to this section shall be released from seizure.

Real property shall not be subject to seizure unless the minimum prescribed punishment for the violation is a term of imprisonment of not less than five years.

All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.), and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this section.

**§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or disabled.**

A. For purposes of this section:

"Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 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, *18.2-371.1:1*, 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 § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

305 "Barrier crime information" means the following facts concerning a person who has been arrested for,  
306 or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the  
307 time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief  
308 description of the barrier crime or offenses for which the person has been arrested or has been  
309 convicted, the disposition of the charge, and any other information that may be useful in identifying  
310 persons arrested for or convicted of a barrier crime.

311 "Care" means the provision of care, treatment, education, training, instruction, supervision, or  
312 recreation to children or the elderly or disabled.

313 "Department" means the Department of State Police.

314 "Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or  
315 seeks to volunteer for a qualified entity.

316 "Identification document" means a document made or issued by or under the authority of the United  
317 States government, a state, a political subdivision of a state, a foreign government, political subdivision  
318 of a foreign government, an international governmental or an international quasi-governmental  
319 organization that, when completed with information concerning a particular individual, is of a type  
320 intended or commonly accepted for the purpose of identification of individuals.

321 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may  
322 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity  
323 provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised  
324 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or  
325 operate a qualified entity.

326 "Qualified entity" means a business or organization that provides care to children or the elderly or  
327 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt  
328 pursuant to subdivision A 7 of § 63.2-1715.

329 B. A qualified entity may request the Department of State Police to conduct a national criminal  
330 background check on any provider who is employed by such entity. No qualified entity may request a  
331 national criminal background check on a provider until such provider has:

332 1. Been fingerprinted; and

333 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and  
334 date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the  
335 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or  
336 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime  
337 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a  
338 background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background  
339 check report, to challenge the accuracy and completeness of any information contained in any such  
340 report, and to obtain a prompt determination as to the validity of such challenge before a final  
341 determination is made by the Department; and (v) a notice to the provider that prior to the completion  
342 of the background check the qualified entity may choose to deny the provider unsupervised access to  
343 children or the elderly or disabled for whom the qualified entity provides care.

344 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a  
345 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in  
346 subsection B, the Department shall make a determination whether the provider has been convicted of or  
347 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier  
348 crime information, the Department shall access the national criminal history background check system,  
349 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other  
350 methods of identification, and shall access the Central Criminal Records Exchange maintained by the  
351 Department. If the Department receives a background report lacking disposition data, the Department  
352 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain  
353 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry  
354 within 15 business days.

355 D. Any background check conducted pursuant to this section for a provider employed by a private  
356 entity shall be screened by the Department of State Police. If the provider has been convicted of or is  
357 under indictment for a barrier crime, the qualified entity shall be notified that the provider is not  
358 qualified to work or volunteer in a position that involves unsupervised access to children or the elderly  
359 or disabled.

360 E. Any background check conducted pursuant to this section for a provider employed by a  
361 governmental entity shall be provided to that entity.

362 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a  
363 national criminal background check, the Department and the Federal Bureau of Investigation may each  
364 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted  
365 with the fingerprints.

366 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. (Expires July 1, 2020) Notwithstanding any provisions in this section to the contrary, a spouse of a birth parent or parent by adoption who is not the birth parent of a child and has filed a petition for adoption of such child in circuit court may request the Department of State Police to conduct a national criminal background check on such prospective adoptive parent at his cost for purposes of § 63.2-1242. Such background checks shall otherwise be conducted in accordance with the provisions of this section.

**§ 40.1-79.01. Exemptions from chapter generally.**

A. Nothing in this chapter, except the provisions of §§ *subsection A of § 40.1-100 A, or § 40.1-100.1; or 40.1-100.2; and 40.1-103*, shall apply to:

1. A child engaged in domestic work when such work is performed in connection with the child's own home and directly for his parent or a person standing in place of his parent;

2. A child employed in occasional work performed outside school hours where such work is in connection with the employer's home but not in connection with the employer's business, trade, or profession;

3. A child 12 or 13 years of age employed outside school hours on farms, in orchards or in gardens with the consent of his parent or a person standing in place of his parent;

4. A child between the ages of 12 and 18 employed as a page or clerk for either the House of Delegates or the Senate of Virginia;

5. A child participating in the activities of a volunteer emergency medical services agency;

6. A child under 16 years of age employed by his parent in an occupation other than manufacturing;

or

7. A child 12 years of age or older employed by an eleemosynary organization or unit of state or local government as a referee for sports programs sponsored by that eleemosynary, state, or local organization or by an organization of referees sponsored by an organization recognized by the United States Olympic Committee under 36 U.S.C. § 220522.

B. Nothing in this chapter, except §§ *§ 40.1-100.1; or 40.1-100.2; and 40.1-103*, shall be construed to apply to a child employed by his parent or a person standing in place of his parent on farms, in orchards or in gardens owned or operated by such parent or person.

**§ 40.1-79.1. Exemptions from chapter generally; participation in volunteer fire company activities.**

A. Any county, city or town may authorize by ordinance any person residing anywhere in the Commonwealth, aged 16 years or older, who is a member of a volunteer fire company within such county, city, or town with parental or guardian approval, (i) to seek certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs; and (ii) to work with or participate in activities of such volunteer fire company, provided such person has attained certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs. Nothing in this chapter shall prohibit participation by such persons in nonhazardous activities of a volunteer fire company, including fire prevention efforts and training courses approved by the Virginia Fire Services Board that are designed to provide situational awareness. Such ordinance shall not require a minor who achieved certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs, on or before January 1, 2006, between the ages of 15 and 16, to repeat the certification after his sixteenth birthday.

B. Any trainer or instructor of such persons mentioned in subsection A and any member of a paid or volunteer fire company who supervises any such persons shall be exempt from the provisions of § *40.1-103 18.2-371.1:1*, provided that the provisions of § 40.1-100 have not been violated, when engaged in activities of a volunteer fire company, and provided that the volunteer fire company or the governing body of such county, city or town has purchased insurance which provides coverage for injuries to or the death of such persons in their performance of activities under this section.

**§ 40.1-113. Child labor offenses; civil penalties.**

A. Whoever employs, procures, or, having under his control, permits a child to be employed in violation of any of the provisions of this chapter other than §§ *§ 40.1-100.2; 40.1-103 and or 40.1-112*, shall be subject to a civil penalty that (i) shall not exceed \$10,000 for each violation that results in the employment of a child who is seriously injured or who dies in the course of that employment and (ii) shall not exceed \$1,000 for each other violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered.

B. The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail or overnight delivery service. Such notice shall contain a description of the alleged violation. Within 21 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. If the employer fails to contest

the violation by requesting such an informal conference within 21 days following receipt of the notice of the alleged violation, the violation and proposed penalty will become a final order of the Commissioner and not subject to review by any court or agency except upon a showing of good cause. Such informal conference shall result in a decision by the Commissioner that will be appealable to the appropriate circuit court. The Department shall send a copy of the Commissioner's decision to the employer by certified mail or overnight delivery service. The employer may file a notice of an appeal only within 30 days from the receipt of the decision. The appeal shall be on the agency record. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support the Commissioner's findings of fact.

C. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the treasury of the Commonwealth. The Commissioner shall prescribe procedures for the payment of proposed penalties which are not contested by employers.

**§ 63.2-1530. Virginia Child Protection Accountability System.**

A. The Virginia Child Protection Accountability System (the System) is created to collect and make available to the public information on the response to reported cases of child abuse and neglect in the Commonwealth. The Department shall establish and maintain the System. The Board shall promulgate regulations to implement the provisions of this section.

B. The following information shall, notwithstanding any state law regarding privacy or confidentiality of records, be included in the System and made available to the public via a website maintained by the Department and in print format:

1. From the Department: (i) the total number of complaints alleging child abuse, neglect, or a combination thereof received; (ii) the total number of complaints deemed valid pursuant to § 63.2-1508; (iii) the total number of complaints investigated by the Department pursuant to subsection I of §§ 63.2-1503 and 63.2-1505; (iv) the total number of cases determined to be founded cases of abuse or neglect; and (v) the total number of cases resulting in a finding that the complaint was founded resulting in administrative appeal. Information reported pursuant to clause (v) shall be reported by total number of appeals to the local department, total number of appeals to the Department, and total number of appeals by outcome of the appeal. For each category of information required by this subdivision, the Department shall also report the total number of cases by type of abuse; by gender, age, and race of the alleged victim; and by the nature of the relationship between the alleged victim and alleged abuser.

2. From the Department of State Police, annually, in a format approved by the Department of Social Services, arrest and disposition statistics for violations of §§ 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-355, 18.2-361, 18.2-366, 18.2-370 through 18.2-370.2, 18.2-371, 18.2-371.1, 18.2-371.1:1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, and 18.2-387; and former § 40.1-103 for inclusion in the Child Protection Accountability System.

3. From every circuit court in the Commonwealth for which data is available through the statewide Case Management System: (i) the total number of (a) misdemeanor convictions appealed from the district court to the circuit court, (b) felony charges certified from the district court to the circuit court, and (c) charges brought by direct indictment in the circuit court that involve a violation of any Code section set forth in subdivision 2; (ii) the total number of cases appealed, certified, or transferred to the court or brought by direct indictment in the circuit court involving a violation of any Code section set forth in subdivision 2 that result in a trial, including the number of bench trials and the number of jury trials; and (iii) the total number of trials involving a violation of any Code section set forth in subdivision 2 resulting in (a) a plea agreement, (b) transfer to another court, (c) a finding of not guilty, (d) conviction on a lesser included offense, or (e) conviction on all charges, by type of trial.

4. From the Virginia Criminal Sentencing Commission, information on sentences imposed for offenses listed in subdivision 2, including (i) the name of the sentencing judge, (ii) the offense or offenses for which a sentence was imposed, (iii) the age of the victim and offender, (iv) the relationship between the victim and the offender, (v) the locality in which the offense occurred, (vi) the sentence imposed and the actual time served, (vii) whether the sentence was an upward or downward departure from the sentencing guidelines or within the sentencing guidelines, and (viii) the reasons given for the departure, if any, from the sentencing guidelines.

5. From the Office of the Executive Secretary of the Supreme Court of Virginia, information by locality on cases from the Juvenile and Domestic Relations District Courts' Case Management System involving (i) children alleged to be abused or neglected, including (a) the number of petitions filed, (b) the number of cases in which an emergency removal order was issued, (c) the number of cases in which a preliminary removal order was issued prior to an adjudicatory hearing, (d) the number of cases in which a preliminary removal order or a preliminary child protective order or both were issued at a preliminary hearing, and (e) the number of cases in which a preliminary child protective order or a child protective order was issued other than at a preliminary hearing; and (ii) family abuse cases, including (a)



the number of family abuse emergency protective orders issued by magistrates and juvenile and domestic relations district courts pursuant to § 16.1-253.4, (b) the number of family abuse protective petitions filed, and (c) the number of family abuse protective orders issued pursuant to § 16.1-279.1.

Information required to be reported pursuant to subdivisions 1 through 5 shall be reported annually in a format approved by the Department of Social Services and aggregated by locality.

C. Data collected pursuant to subsection B shall be made available to the public on a website established and maintained by the Department and shall also be made readily available to the public in print format. Information included in the System shall be presented in such a manner that no individual identifying information shall be included.

**§ 63.2-1727. Sex offender or child abuser prohibited from operating or residing in family day home; penalty.**

It shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in, is employed by, or volunteers in the home, has been convicted of a felony in violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355, 18.2-361, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1, *18.2-371.1:1*, or 18.2-374.1, has been convicted of any offense that requires registration on the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-902, or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. A violation of this section is punishable as a Class 1 misdemeanor.

**2. That § 40.1-103 of the Code of Virginia is 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 854 of the Acts of Assembly of 2019 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.**