

2021 SESSION

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SENATE BILL NO. 1138

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A BILL to amend and reenact §§ 16.1-69.55, 17.1-805, 18.2-52.1, 18.2-346.1, 19.2-8, 19.2-299, 19.2-310.2, 19.2-392.02, as it is currently effective and as it shall become effective, 32.1-291.16, 54.1-2982, 54.1-2983, and 57-48 of the Code of Virginia and to repeal §§ 18.2-62, 18.2-67.4:1, and 32.1-289.2 of the Code of Virginia, relating to sexually transmitted infections; infected sexual battery; repeal.

Patrons—Locke, McClellan and Surovell; Delegate: Carr

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.55, 17.1-805, 18.2-52.1, 18.2-346.1, 19.2-8, 19.2-299, 19.2-310.2, 19.2-392.02, as it is currently effective and as it shall become effective, 32.1-291.16, 54.1-2982, 54.1-2983, and 57-48 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.55. Retention of case records; limitations on enforcement of judgments; extensions.

A. Criminal and traffic infraction proceedings:

1. In misdemeanor and traffic infraction cases, except misdemeanor cases under § 16.1-253.2, 18.2-57.2, or 18.2-60.4, all documents shall be retained for 10 years, including cases sealed in expungement proceedings under § 19.2-392.2. In misdemeanor cases under § 16.1-253.2, 18.2-57.2, or 18.2-60.4, all documents shall be retained for 20 years. In misdemeanor cases under §§ 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, and former § 18.2-67.4:1, all documents shall be retained for 50 years. Documents in misdemeanor and traffic infraction cases for which an appeal has been made shall be returned to and filed with the clerk of the appropriate circuit court pursuant to § 16.1-135;

2. In felony cases that are certified to the grand jury, all documents shall be certified to the clerk of the appropriate circuit court pursuant to §§ 19.2-186 and 19.2-190. All other felony case documents shall be handled as provided in subdivision 1;

3. Dockets and indices shall be retained for 10 years.

B. Civil proceedings:

1. All documents in civil proceedings in district court that are dismissed, including dismissal under § 8.01-335, shall be retained until completion of the Commonwealth's audit of the court records. Notwithstanding § 8.01-275.1, the clerks of the district courts may destroy documents in civil proceedings in which no service of process is had 24 months after the last return date;

2. In civil actions that result in a judgment, all documents in the possession of the general district court shall be retained for 10 years and, unless sooner satisfied, the judgment shall remain in force for a period of 10 years;

3. In civil cases that are appealed to the circuit court pursuant to § 16.1-112, all documents pertaining thereto shall be transferred to the circuit court in accordance with those sections;

4. The limitations on enforcement of general district court judgments provided in § 16.1-94.1 shall not apply if the plaintiff, prior to the expiration of that period for enforcement, pays the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and dockets the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. However, a judgment debtor wishing to discharge a judgment pursuant to the provisions of § 8.01-456, when the judgment creditor cannot be located, may, prior to the expiration of that period for enforcement, pay the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and docket the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. After the expiration of the period provided in § 16.1-94.1, executions on such docketed civil judgments may issue from the general district court wherein the judgment was obtained upon the filing in the general district court of an abstract from the circuit court. In all other respects, the docketing of a general district court judgment in a circuit court confers upon such judgment the same status as if the judgment were a circuit court judgment;

5. Dockets for civil cases shall be retained for 10 years;

6. Indices in civil cases shall be retained for 10 years.

C. Juvenile and domestic relations district court proceedings:

1. In adult criminal cases, all records shall be retained as provided in subdivision A 1;

2. In juvenile cases, all documents and indices shall be governed by the provisions of § 16.1-306;

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59 3. In all cases involving support arising under Title 16.1, 20, or 63.2, all documents and indices shall
60 be retained until the last juvenile involved, if any, has reached 19 years of age and 10 years have
61 elapsed from either dismissal or termination of the case by court order or by operation of law. Financial
62 records in connection with such cases shall be subject to the provisions of § 16.1-69.56;

63 4. In all cases involving sexually violent offenses, as defined in § 37.2-900, and in all misdemeanor
64 cases under §§ 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370,
65 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, *and former § 18.2-67.4:1*, all documents
66 shall be retained for 50 years;

67 5. In cases transferred to circuit court for trial as an adult or appealed to circuit court, all documents
68 pertaining thereto shall be transferred to circuit court;

69 6. All dockets in juvenile cases shall be governed by the provisions of subsection F of § 16.1-306.

70 D. At the direction of the chief judge of a district court, the clerk of that court may cause any or all
71 papers or documents pertaining to civil and criminal cases that have been ended to be destroyed if such
72 records, papers, or documents will no longer have administrative, fiscal, historical, or legal value to
73 warrant continued retention, provided such records, papers, or documents have been microfilmed or
74 converted to an electronic format. Such microfilm and microphotographic processes and equipment shall
75 meet state archival microfilm standards pursuant to § 42.1-82, or such electronic format shall follow
76 state electronic records guidelines, and such records, papers, or documents so converted shall be placed
77 in conveniently accessible files and provisions made for examining and using the same. The provisions
78 of this subsection shall not apply to the documents for misdemeanor cases under §§ 16.1-253.2,
79 18.2-57.2, 18.2-60.4, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349,
80 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, *and former § 18.2-67.4:1* which
81 shall be retained as provided in subsection A.

82 **§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.**

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

91 1. The midpoint of the initial recommended sentencing range for first degree murder, second degree
92 murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual
93 battery shall be further increased by (i) 125 percent in cases in which the defendant has no previous
94 conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously
95 been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years;
96 or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony
97 offense punishable by a maximum punishment of 40 years or more, except that the recommended
98 sentence for a defendant convicted of first degree murder who has previously been convicted of a
99 violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be
100 imprisonment for life;

101 2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery,
102 aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory
103 burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any
104 statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100
105 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300
106 percent in cases in which the defendant has previously been convicted of a violent felony offense
107 punishable by a maximum term of imprisonment of less than 40 years, or (iii) 500 percent in cases in
108 which the defendant has previously been convicted of a violent felony offense punishable by a
109 maximum term of imprisonment of 40 years or more;

110 3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving, or
111 distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II
112 controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has
113 previously been convicted of a violent felony offense punishable by a maximum punishment of less than
114 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent
115 felony offense punishable by a maximum term of imprisonment of 40 years or more; and

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

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

125 C. For purposes of this chapter, violent felony offenses shall include any felony violation of
126 § 16.1-253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32,
127 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
128 § 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
129 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
130 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,
131 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
132 violation of subsection B of § 18.2-57; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or
133 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,
134 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
135 third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in
136 violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; ~~any violation of~~
137 subsection A of § 18.2-67.4:1; any violation of subsection A of § 18.2-77; any Class 3 felony violation
138 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,
139 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of
140 § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any
141 felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any felony
142 violation of subsection A or B of § 18.2-280; any violation of § 18.2-281; any felony violation of
143 subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation of § 18.2-286.1,
144 18.2-287.2, 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any felony violation of
145 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
146 § 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,
147 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
148 § 18.2-358; any violation of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366;
149 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
150 felony violation of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1;
151 any felony violation of § 18.2-374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second or
152 subsequent offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any
153 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
154 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,
155 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
156 violation of § 53.1-203; any conspiracy or attempt to commit any offense specified in this subsection, or
157 any substantially similar offense under the laws of any state, the District of Columbia, or the United
158 States or its territories.

§ 18.2-52.1. Possession of infectious biological substances or radiological agents; penalties.

160 A. Any person who possesses, with the intent thereby to injure another, an infectious biological
161 substance or radiological agent is guilty of a Class 5 felony.

162 B. Any person who (i) destroys or damages, or attempts to destroy or damage, any facility,
163 equipment or material involved in the sale, manufacturing, storage or distribution of an infectious
164 biological substance or radiological agent, with the intent to injure another by releasing the substance, or
165 (ii) manufactures, sells, gives, distributes or uses an infectious biological substance or radiological agent
166 with the intent to injure another is guilty of a Class 4 felony.

167 C. Any person who maliciously and intentionally causes any other person bodily injury by means of
168 an infectious biological substance or radiological agent is guilty of a felony and shall be punished by
169 confinement in a state correctional facility for a period of not less than five years nor more than 30
170 years.

171 An "infectious biological substance" includes any bacteria, viruses, fungi, protozoa, or rickettsiae
172 capable of causing death or serious bodily injury. This definition shall not include *the human*
173 *immunodeficiency virus (HIV)* as defined in ~~§ 18.2-67.4:1 or any other related virus that causes~~
174 *acquired immunodeficiency syndrome (AIDS)*, syphilis, or hepatitis B.

175 A "radiological agent" includes any substance able to release radiation at levels that are capable of
176 causing death or serious bodily injury.

**§ 18.2-346.1. Testing of convicted prostitutes and injection drug users for infection with human
178 immunodeficiency viruses and hepatitis C.**

179 A. As soon as practicable following conviction of any person for violation of § 18.2-346 or 18.2-361,
180 or any violation of Article 1 (§ 18.2-247 et seq.) or 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 involving the
181 possession, sale, or use of a controlled substance in a form amenable to intravenous use; or the

182 possession, sale, or use of hypodermic syringes, needles, or other objects designed or intended for use in
183 parenterally injecting controlled substances into the human body, such person shall be required provided
184 the option to submit to testing for infection with human immunodeficiency viruses and hepatitis C a
185 sexually transmitted infection. The convicted person shall receive counseling from personnel of the
186 Department of Health concerning (i) the meaning of the test, (ii) acquired immunodeficiency syndrome
187 and hepatitis C sexually transmitted infections, and (iii) the transmission and prevention of infection with
188 human immunodeficiency viruses and hepatitis C sexually transmitted infections.

189 B. Tests for human immunodeficiency viruses shall be conducted to confirm any initial positive test
190 results before any test result shall be determined to be positive for infection. Any tests performed
191 pursuant to this section shall be consistent with current Centers for Disease Control and Prevention
192 recommendations. The results of such test for a sexually transmitted infection shall be confidential as
193 provided in § 32.1-36.1 and shall be disclosed to the person who is the subject of the test and to the
194 Department of Health as required by § 32.1-36. The Department shall conduct surveillance and
195 investigation in accordance with the requirements of § 32.1-39.

196 C. Upon receiving a report of a positive test for hepatitis C, the State Health Commissioner may
197 share protected health information relating to such positive test with relevant sheriffs' offices, the state
198 police, local police departments, adult or youth correctional facilities, salaried or volunteer firefighters,
199 paramedics or emergency medical technicians, officers of the court, and regional or local jails (i) to the
200 extent necessary to advise exposed individuals of the risk of infection and to enable exposed individuals
201 to seek appropriate testing and treatment; and (ii) as may be needed to prevent and control disease and
202 is deemed necessary to prevent serious harm and serious threats to the health and safety of individuals
203 and the public.

204 The disclosed protected health information shall be held confidential; no person to whom such
205 information is disclosed shall redisclose or otherwise reveal the protected health information without first
206 obtaining the specific authorization from the individual who was the subject of the test for such
207 redisclosure.

208 Such protected health information shall only be used to protect the health and safety of individuals
209 and the public in conformance with the regulations concerning patient privacy promulgated by the
210 federal Department of Health and Human Services, as such regulations may be amended.

211 D. The results of the tests shall not be admissible in any criminal proceeding related to prostitution
212 or drug use.

213 The cost of the tests shall be paid by the Commonwealth and taxed as part of the cost of such
214 criminal proceedings.

215 **§ 19.2-8. Limitation of prosecutions.**

216 A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be
217 commenced within one year next after there was cause therefor, except that a prosecution for petit
218 larceny may be commenced within five years, and for an attempt to produce abortion, within two years
219 after commission of the offense.

220 A prosecution for any misdemeanor violation of § 54.1-3904 shall be commenced within two years
221 of the discovery of the offense.

222 A prosecution for violation of laws governing the placement of children for adoption without a
223 license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the
224 petition for adoption.

225 A prosecution for making a false statement or representation of a material fact knowing it to be false
226 or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under
227 the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three
228 years next after the commission of the offense.

229 A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11
230 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission
231 of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the
232 commission of the offense.

233 Prosecution of Building Code violations under § 36-106 shall commence within one year of
234 discovery of the offense by the building official, provided that such discovery occurs within two years
235 of the date of initial occupancy or use after construction of the building or structure, or the issuance of a
236 certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions
237 under § 36-106 relating to the maintenance of existing buildings or structures as contained in the
238 Uniform Statewide Building Code shall commence within one year of the issuance of a notice of
239 violation for the offense by the building official.

240 Prosecution of any misdemeanor violation of § 54.1-111 shall commence within one year of the
241 discovery of the offense by the complainant, but in no case later than five years from occurrence of the
242 offense.

243 Prosecution of any misdemeanor violation of any professional licensure requirement imposed by a

244 locality shall commence within one year of the discovery of the offense by the complainant, but in no
245 case later than five years from occurrence of the offense.

246 Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within
247 two years next after the commission of the offense.

248 Prosecution for a violation for which a penalty is provided for by § 55.1-1989 shall commence
249 within three years next after the commission of the offense.

250 Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under
251 § 29.1-553 shall commence within three years after commission of the offense.

252 Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements,
253 documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any
254 tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to
255 make any return at the time or times required by law or regulations shall commence within three years
256 next after the commission of the offense, unless a longer period is otherwise prescribed.

257 Prosecution of violations of subsection A or B of § 3.2-6570 shall commence within five years of the
258 commission of the offense, except violations regarding agricultural animals shall commence within one
259 year of the commission of the offense.

260 A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the
261 commission of the offense.

262 A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ 24.2-945 et
263 seq.) of Title 24.2, shall commence within one year of the discovery of the offense but in no case more
264 than three years after the date of the commission of the offense.

265 A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer
266 Crimes Act (§ 18.2-152.1 et seq.) or pursuant to § 18.2-186.3 for identity theft shall be commenced
267 before the earlier of (i) five years after the commission of the last act in the course of conduct
268 constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity
269 of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged
270 by such violation.

271 A prosecution of a misdemeanor under § 18.2-64.2, 18.2-67.4, ~~18.2-67.4:1~~, 18.2-67.4:2, 18.2-67.5, or
272 18.2-370.6 where the victim is a minor at the time of the offense shall be commenced no later than one
273 year after the victim reaches majority, unless the alleged offender of such offense was an adult and
274 more than three years older than the victim at the time of the offense, in which instance such
275 prosecution shall be commenced no later than five years after the victim reaches majority.

276 A prosecution for a violation of § 18.2-260.1 shall be commenced within three years of the
277 commission of the offense.

278 Nothing in this section shall be construed to apply to any person fleeing from justice or concealing
279 himself within or without the Commonwealth to avoid arrest or be construed to limit the time within
280 which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or
281 failure to provide for the support and maintenance of a spouse or child.

282 **§ 19.2-299. Investigations and reports by probation officers in certain cases.**

283 A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of
284 § 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,
285 attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of
286 § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the
287 attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a
288 felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement
289 between the defendant and the Commonwealth and shall, unless waived by the defendant and the
290 attorney for the Commonwealth, when the defendant pleads guilty or nolo contendere without a plea
291 agreement or is found guilty by the court after a plea of not guilty or nolo contendere; or (iii) the court
292 shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or
293 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,
294 § 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,
295 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,
296 or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5,
297 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report
298 upon the history of the accused, including a report of the accused's criminal record as an adult and
299 available juvenile court records, any information regarding the accused's participation or membership in
300 a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so
301 the court may determine the appropriate sentence to be imposed. Unless the defendant or the attorney
302 for the Commonwealth objects, the court may order that the report contain no more than the defendant's
303 criminal history, any history of substance abuse, any physical or health-related problems as may be
304 pertinent, and any applicable sentencing guideline worksheets. This expedited report shall be subject to

305 all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The
306 probation officer, after having furnished a copy of this report at least five days prior to sentencing to
307 counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his
308 report in advance of the sentencing hearing to the judge in chambers, who shall keep such report
309 confidential. Counsel for the accused may provide the accused with a copy of the presentence report.
310 The probation officer shall be available to testify from this report in open court in the presence of the
311 accused, who shall have been provided with a copy of the presentence report by his counsel or advised
312 of its contents and be given the right to cross-examine the investigating officer as to any matter
313 contained therein and to present any additional facts bearing upon the matter. The report of the
314 investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part
315 of the record in the case. Any report so filed shall be made available only by court order and shall be
316 sealed upon final order by the court, except that such reports or copies thereof shall be available at any
317 time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United
318 States; to any agency where the accused is referred for treatment by the court or by probation and
319 parole services; and to counsel for any person who has been indicted jointly for the same felony as the
320 person subject to the report. Subject to the limitations set forth in § 37.2-901, any report prepared
321 pursuant to the provisions hereof shall without court order be made available to counsel for the person
322 who is the subject of the report if that person (a) is charged with a felony subsequent to the time of the
323 preparation of the report or (b) has been convicted of the crime or crimes for which the report was
324 prepared and is pursuing a post-conviction remedy. Such report shall be made available for review
325 without a court order to incarcerated persons who are eligible for release by the Virginia Parole Board,
326 or such person's counsel, pursuant to regulations promulgated by the Virginia Parole Board for that
327 purpose. The presentence report shall be in a form prescribed by the Department of Corrections. In all
328 cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the
329 Department of Corrections. For the purposes of this subsection, information regarding the accused's
330 participation or membership in a criminal street gang may include the characteristics, specific rivalries,
331 common practices, social customs and behavior, terminology, and types of crimes that are likely to be
332 committed by that criminal street gang.

333 B. As a part of any presentence investigation conducted pursuant to subsection A when the offense
334 for which the defendant was convicted was a felony, the court probation officer shall advise any victim
335 of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be
336 given the opportunity to submit to the Board a written statement in advance of any parole hearing
337 describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii)
338 to receive copies of such other notifications pertaining to the defendant as the Board may provide
339 pursuant to subsection B of § 53.1-155.

340 C. As part of any presentence investigation conducted pursuant to subsection A when the offense for
341 which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.)
342 of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant
343 with illicit drug operations or markets.

344 D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense
345 for which the defendant was convicted was a felony, not a capital offense, committed on or after
346 January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to
347 § 18.2-251.01.

348 **§ 19.2-310.2. Blood, saliva, or tissue sample required for DNA analysis upon conviction of
349 certain crimes; fee.**

350 A. Every person convicted of a felony on or after July 1, 1990, every person convicted of a felony
351 offense under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 who was incarcerated on July 1,
352 1989, and every person convicted of a misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-60.3,
353 18.2-60.4, or 18.2-67.4, former § 18.2-67.4:1, § 18.2-67.4:2, 18.2-67.5, 18.2-102, 18.2-119, 18.2-121,
354 18.2-130, 18.2-370.6, 18.2-387, or 18.2-387.1, or subsection E of § 18.2-460 or of any similar ordinance
355 of any locality shall have a sample of his blood, saliva, or tissue taken for DNA (deoxyribonucleic acid)
356 analysis to determine identification characteristics specific to the person. If a sample has been previously
357 taken from the person as indicated by the Local Inmate Data System (LIDS), no additional sample shall
358 be taken. The Department of Forensic Science shall provide to LIDS the most current information
359 submitted to the DNA data bank on a weekly basis and shall remove from LIDS and the data bank
360 persons no longer eligible to be in the data bank. A fee of \$53 shall be charged for the withdrawal of
361 this sample. The fee shall be taxed as part of the costs of the criminal case resulting in the conviction
362 and \$15 of the fee shall be paid into the general fund of the locality where the sample was taken and
363 \$38 of the fee shall be paid into the general fund of the state treasury. This fee shall only be taxed one
364 time regardless of the number of samples taken. The assessment provided for herein shall be in addition
365 to any other fees prescribed by law. The analysis shall be performed by the Department of Forensic
366 Science or other entity designated by the Department. The identification characteristics of the profile

367 resulting from the DNA analysis shall be stored and maintained by the Department in a DNA data bank
368 and shall be made available only as provided in § 19.2-310.5.

369 B. After July 1, 1990, the blood, saliva, or tissue sample shall be taken prior to release from custody.
370 Notwithstanding the provisions of § 53.1-159, any person convicted of an offense listed in subsection A
371 who is in custody after July 1, 1990, shall provide a blood, saliva, or tissue sample prior to his release.
372 Every person so convicted after July 1, 1990, who is not sentenced to a term of confinement shall
373 provide a blood, saliva, or tissue sample as a condition of such sentence. A person required under this
374 section to submit a sample for DNA analysis is not relieved from this requirement regardless of whether
375 no blood, saliva, or tissue sample has been taken from the person or, if a sample has been taken,
376 whether the sample or the results from the analysis of a sample cannot be found in the DNA data bank
377 maintained by the Department of Forensic Science.

378 C. Nothing in this section shall prevent the Department of Forensic Science from including the
379 identification characteristics of an individual's DNA profile in the DNA data bank as ordered by a
380 circuit court pursuant to a lawful plea agreement.

381 D. A collection or placement of a sample for DNA analysis that was taken or retained in good faith
382 does not invalidate the sample's use in the data bank pursuant to the provisions of this article. The
383 detention, arrest, or conviction of a person based upon a data bank match or data bank information is
384 not invalidated if it is determined that the sample was obtained, placed, or retained in the data bank in
385 good faith, or if the conviction or juvenile adjudication that resulted in the collection of the DNA
386 sample was subsequently vacated or otherwise altered in any future proceeding, including but not limited
387 to post-trial or post-fact-finding motions, appeals, or collateral attacks.

388 E. The Virginia Department of Corrections and the Department of Forensic Science shall, on a
389 quarterly basis, compare databases of offenders under the custody or supervision of the Department of
390 Corrections with the DNA data bank of the Department of Forensic Science. The Virginia Department
391 of Corrections shall require a DNA sample of those offenders under its custody or supervision if they
392 are not identified in the DNA data bank.

393 F. The Department of State Police shall verify that a DNA sample required to be taken for the Sex
394 Offender and Crimes Against Minors Registry pursuant to § 9.1-903 has been received by the
395 Department of Forensic Science. In any instance where a DNA sample has not been received, the
396 Department of State Police or its designee shall obtain from the person required to register a sample for
397 DNA analysis.

398 G. Each community-based probation services agency established pursuant to § 9.1-174 shall
399 determine by reviewing the Local Inmate Data System upon intake and again prior to discharge whether
400 a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a
401 sample pursuant to this section and, if no sample has been taken, require an offender to submit a sample
402 for DNA analysis.

403 H. The sheriff or regional jailer shall determine by reviewing the Local Inmate Data System upon
404 intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA
405 analysis for each offender required to submit a sample pursuant to this section and, if no sample has
406 been taken, require an offender to submit a sample for DNA analysis.

407 **§ 19.2-392.02. (Effective until July 1, 2021) National criminal background checks by businesses
408 and organizations regarding employees or volunteers providing care to children or the elderly or
409 disabled.**

410 A. For purposes of this section:

411 "Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32,
412 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
413 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,
414 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
415 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,
416 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,
417 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;
418 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,
419 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,
420 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,
421 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,
422 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
423 18.2-314; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of § 18.2-355,
424 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of
425 § 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,
426 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
427 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,

428 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,
429 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
430 substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89,
431 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
432 another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03,
433 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,
434 or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony
435 violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v)
436 any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex
437 Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person
438 is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2
439 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex
440 Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense
441 under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes
442 against minors registry is required under the laws of the jurisdiction where the offender was convicted;
443 or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed
444 from the date of the conviction.

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

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

453 "Department" means the Department of State Police.

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

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

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

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

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

- 472 1. Been fingerprinted; and
- 473 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and
474 date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the
475 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or
476 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime
477 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a
478 background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background
479 check report, to challenge the accuracy and completeness of any information contained in any such
480 report, and to obtain a prompt determination as to the validity of such challenge before a final
481 determination is made by the Department; and (v) a notice to the provider that prior to the completion
482 of the background check the qualified entity may choose to deny the provider unsupervised access to
483 children or the elderly or disabled for whom the qualified entity provides care.

484 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a
485 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in
486 subsection B, the Department shall make a determination whether the provider has been convicted of or
487 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier
488 crime information, the Department shall access the national criminal history background check system,
489 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other

490 methods of identification, and shall access the Central Criminal Records Exchange maintained by the
491 Department. If the Department receives a background report lacking disposition data, the Department
492 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain
493 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry
494 within 15 business days.

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

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

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

506 G. The failure to request a criminal background check pursuant to subsection B shall not be
507 considered negligence per se in any civil action.

508 H. [Expired.]

509 **§ 19.2-392.02. (Effective July 1, 2021) National criminal background checks by businesses and
510 organizations regarding employees or volunteers providing care to children or the elderly or
511 disabled.**

512 A. For purposes of this section:

513 "Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32,
514 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
515 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,
516 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
517 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,
518 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,
519 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;
520 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,
521 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,
522 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,
523 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,
524 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
525 18.2-314; any felony violation of § 18.2-346, 18.2-348, or 18.2-349; any violation of § 18.2-355,
526 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of
527 § 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,
528 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
529 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,
530 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,
531 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
532 substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89,
533 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
534 another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03,
535 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,
536 or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony
537 violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v)
538 any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex
539 Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person
540 is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2
541 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex
542 Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense
543 under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes
544 against minors registry is required under the laws of the jurisdiction where the offender was convicted;
545 or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed
546 from the date of the conviction.

547 "Barrier crime information" means the following facts concerning a person who has been arrested for,
548 or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the
549 time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief
550 description of the barrier crime or offenses for which the person has been arrested or has been

551 convicted, the disposition of the charge, and any other information that may be useful in identifying
552 persons arrested for or convicted of a barrier crime.

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

555 "Department" means the Department of State Police.

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

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

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

568 "Qualified entity" means a business or organization that provides care to children or the elderly or
569 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt
570 pursuant to subdivision A 7 of § 22.1-289.030.

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

574 1. Been fingerprinted; and
575 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and
576 date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the
577 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or
578 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime
579 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a
580 background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background
581 check report, to challenge the accuracy and completeness of any information contained in any such
582 report, and to obtain a prompt determination as to the validity of such challenge before a final
583 determination is made by the Department; and (v) a notice to the provider that prior to the completion
584 of the background check the qualified entity may choose to deny the provider unsupervised access to
585 children or the elderly or disabled for whom the qualified entity provides care.

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

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

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

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

608 G. The failure to request a criminal background check pursuant to subsection B shall not be
609 considered negligence per se in any civil action.

610 H. [Expired.]

611 **§ 32.1-291.16. Sale or purchase of parts prohibited; penalty.**

612 A. With the exception of hair, ova, blood, and other self-replicating body fluids, it shall be unlawful

613 for any person to sell, to offer to sell, to buy, to offer to buy, or to procure through purchase any
614 natural body part for any reason including, but not limited to, medical and scientific uses such as
615 transplantation, implantation, infusion, or injection. Any person engaging in any of these prohibited
616 activities shall be guilty of a Class 4 felony.

617 B. Nothing in this section shall prohibit the reimbursement of reasonable expenses associated with
618 the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of
619 a part.

620 C. *This section shall not be construed to prohibit the donation of any organs, tissues, or any natural
621 body part, knowing that the donor is, or was, infected with a sexually transmitted infection, for use in
622 medical or scientific research.*

623 D. *Notwithstanding the provisions of subsection A, this section shall not prohibit the donation or
624 acquisition of organs for transplantation, provided that (i) the recipient of such organ is informed that
625 such organ is infected with human immunodeficiency virus and, following such notice, consents to the
626 receipt of such organ and (ii) acquisition and transplantation of such organ is in compliance with the
627 provisions of the HIV Organ Policy Equity Act, 42 U.S.C. § 274f-5.*

628 **§ 54.1-2982. Definitions.**

629 As used in this article:

630 "Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in
631 accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the
632 declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in
633 accordance with the provisions of § 54.1-2983.

634 "Agent" means an adult appointed by the declarant under an advance directive, executed or made in
635 accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant
636 may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of
637 his body pursuant to Article 2 (~~§ 32.1-289.2~~ § 32.1-291.1 et seq.) of Chapter 8 of Title 32.1.

638 "Attending physician" means the primary physician who has responsibility for the health care of the
639 patient.

640 "Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training
641 or experience to assess whether a person is capable or incapable of making an informed decision.

642 "Declarant" means an adult who makes an advance directive, as defined in this article, while capable
643 of making and communicating an informed decision.

644 "Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to
645 § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac
646 or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac
647 compression, endotracheal intubation and other advanced airway management, artificial ventilation, and
648 defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate
649 Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as
650 an advance directive.

651 "Health care" means the furnishing of services to any individual for the purpose of preventing,
652 alleviating, curing, or healing human illness, injury or physical disability, including but not limited to,
653 medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital,
654 nursing home, assisted living facility, or other health care facility; psychiatric or other mental health
655 treatment; and life-prolonging procedures and palliative care.

656 "Health care provider" shall have the same meaning as provided in § 8.01-581.1.

657 "Incapable of making an informed decision" means the inability of an adult patient, because of
658 mental illness, intellectual disability, or any other mental or physical disorder that precludes
659 communication or impairs judgment, to make an informed decision about providing, continuing,
660 withholding or withdrawing a specific health care treatment or course of treatment because he is unable
661 to understand the nature, extent or probable consequences of the proposed health care decision, or to
662 make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this
663 article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise
664 mentally competent and able to communicate by means other than speech, shall not be considered
665 incapable of making an informed decision.

666 "Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes
667 mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is
668 otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal
669 condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the
670 dying process. The term includes artificially administered hydration and nutrition. However, nothing in
671 this act shall prohibit the administration of medication or the performance of any medical procedure
672 deemed necessary to provide comfort care or to alleviate pain, including the administration of pain
673 relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and

674 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include
675 cardiopulmonary resuscitation.

676 "Patient care consulting committee" means a committee duly organized by a facility licensed to
677 provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in
678 § 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure
679 pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient
680 care consulting committee shall consist of five individuals, including at least one physician, one person
681 licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice
682 professional nursing, and one individual responsible for the provision of social services to patients of the
683 facility. At least one committee member shall have experience in clinical ethics and at least two
684 committee members shall have no employment or contractual relationship with the facility or any
685 involvement in the management, operations, or governance of the facility, other than serving on the
686 patient care consulting committee. A patient care consulting committee may be organized as a
687 subcommittee of a standing ethics or other committee established by the facility or may be a separate
688 and distinct committee. Four members of the patient care consulting committee shall constitute a quorum
689 of the patient care consulting committee.

690 "Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient
691 has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of
692 surroundings in a learned manner, other than reflex activity of muscles and nerves for low level
693 conditioned response, and from which, to a reasonable degree of medical probability, there can be no
694 recovery.

695 "Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the
696 jurisdiction where the health care is to be rendered or withheld.

697 "Qualified advance directive facilitator" means a person who has successfully completed a training
698 program approved by the Department of Health for providing assistance in completing and executing a
699 written advance directive, including successful demonstration of competence in assisting a person in
700 completing and executing a valid advance directive and successful passage of a written examination.

701 "Terminal condition" means a condition caused by injury, disease or illness from which, to a
702 reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent
703 or (ii) the patient is in a persistent vegetative state.

704 "Witness" means any person over the age of 18, including a spouse or blood relative of the
705 declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be
706 permitted to serve as witnesses for purposes of this article.

707 **§ 54.1-2983. Procedure for making advance directive; notice to physician.**

708 Any adult capable of making an informed decision may, at any time, make a written advance
709 directive to address any or all forms of health care in the event the declarant is later determined to be
710 incapable of making an informed decision. A written advance directive shall be signed by the declarant
711 in the presence of two subscribing witnesses and may (i) specify the health care the declarant does or
712 does not authorize; (ii) appoint an agent to make health care decisions for the declarant; and (iii) specify
713 an anatomical gift, after the declarant's death, of all of the declarant's body or an organ, tissue or eye
714 donation pursuant to Article 2 (§ 32.1-289.2 § 32.1-291.1 et seq.) of Chapter 8 of Title 32.1. A written
715 advance directive may be submitted to the Advance Health Care Directive Registry, pursuant to Article
716 9 (§ 54.1-2994 et seq.).

717 Further, any adult capable of making an informed decision who has been diagnosed by his attending
718 physician as being in a terminal condition may make an oral advance directive (i) directing the specific
719 health care the declarant does or does not authorize in the event the declarant is incapable of making an
720 informed decision, and (ii) appointing an agent to make health care decisions for the declarant under the
721 circumstances stated in the advance directive if the declarant should be determined to be incapable of
722 making an informed decision. An oral advance directive shall be made in the presence of the attending
723 physician and two witnesses.

724 An advance directive may authorize an agent to take any lawful actions necessary to carry out the
725 declarant's decisions, including, but not limited to, granting releases of liability to medical providers,
726 releasing medical records, and making decisions regarding who may visit the patient.

727 It shall be the responsibility of the declarant to provide for notification to his attending physician that
728 an advance directive has been made. If an advance directive has been submitted to the Advance Health
729 Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.), it shall be the responsibility of the
730 declarant to provide his attending physician, legal representative, or other person with the information
731 necessary to access the advance directive. In the event the declarant is comatose, incapacitated or
732 otherwise mentally or physically incapable of communication, any other person may notify the physician
733 of the existence of an advance directive and, if applicable, the fact that it has been submitted to the
734 Advance Health Care Directive Registry. An attending physician who is so notified shall promptly make
735 the advance directive or a copy of the advance directive, if written, or the fact of the advance directive,

736 if oral, a part of the declarant's medical records.

737 In the event that any portion of an advance directive is invalid or illegal, such invalidity or illegality
738 shall not affect the remaining provisions of the advance directive.

739 **§ 57-48. Definitions.**

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

741 "Board" means the Board of Agriculture and Consumer Services.

742 "Charitable organization" means any person that is or holds itself out to be organized or operated for
743 any charitable purpose, or any person that solicits or obtains contributions solicited from the public.
744 "Charitable organization" does not include (i) any church or convention or association of churches,
745 primarily operated for nonsecular purposes and no part of the net income of which inures to the direct
746 benefit of any individual; (ii) any political party as defined in § 24.2-101 or any political campaign
747 committee or political action committee or other political committee required by state or federal law to
748 file a report or statement of contributions and expenditures; or (iii) any authorized individual who
749 solicits, by authority of such organization, solely on behalf of a registered or exempt charitable
750 organization or on behalf of an organization excluded from the definition of charitable organization.

751 "Charitable purpose" means any charitable, benevolent, humane, philanthropic, patriotic, or
752 eleemosynary purpose and the purposes of influencing legislation or influencing the actions of any
753 public official or instigating, prosecuting, or intervening in litigation.

754 "Charitable sales promotion" means advertised sales that feature the names of both the commercial
755 co-venturer and the charitable or civic organization and that state that the purchase or use of the goods,
756 services, entertainment, or any other thing of value that the commercial co-venturer normally sells will
757 benefit the charitable or civic organization or its purposes. To qualify as a charitable sales promotion,
758 the consumer must pay the same price for the thing of value as the commercial co-venturer usually
759 charges without the charitable sales promotion and the consumer retains the thing of value.

760 "Civic organization" means any local service club, veterans post, fraternal society or association,
761 volunteer fire or rescue group, or local civic league or association of 10 or more persons not organized
762 for profit but operated exclusively for educational or charitable purposes as defined in this section,
763 including the promotion of community welfare, and the net earnings of which are devoted exclusively to
764 charitable, educational, recreational, or social welfare purposes.

765 "Commercial co-venturer" means any person who (i) is organized for profit, (ii) is regularly and
766 primarily engaged in trade or commerce, other than in connection with soliciting for charitable or civic
767 organizations or charitable purposes, and (iii) conducts an advertised charitable sales promotion for a
768 specified limited period of time.

769 "Commissioner" means the Commissioner of Agriculture and Consumer Services or a member of his
770 staff to whom he may delegate his duties under this chapter.

771 "Contribution" means any gift, bequest, devise, or other grant of any money, credit, financial
772 assistance, or property of any kind or value, including the promise to contribute, except payments by the
773 membership of an organization for membership fees, dues, fines, or assessments, or for services rendered
774 to individual members, and except money, credit, financial assistance, or property received from any
775 governmental authority. "Contribution" does not include any donation of blood or any gift made
776 pursuant to Article 2 (§ 32.1-289.2 § 32.1-291.1 et seq.) of Chapter 8 of Title 32.1.

777 "Department" means the Department of Agriculture and Consumer Services.

778 "Federated fund-raising organization" means any federation of independent charitable organizations
779 that have voluntarily joined together, including but not limited to a United Fund or Community Chest,
780 for purposes of raising and distributing money for and among themselves and where membership does
781 not confer operating authority and control of the individual agencies upon the federated group
782 organization.

783 "File with the Commissioner" means depositing the originals of the documents required to be filed,
784 along with the payment of the appropriate fee and all supporting documents with the Department or
785 submitting the required documents and any appropriate attachments and fees by utilizing an online filing
786 system approved by the Commissioner.

787 "Fund-raising expenses" means the expenses of all activities that constitute or are an integral and
788 inseparable part of a solicitation.

789 "Membership" means those persons to whom, for payment of fees, dues, assessments, etc., an
790 organization provides services and confers a bona fide right, privilege, professional standing, honor, or
791 other direct benefit, in addition to the right to vote, elect officers, or hold offices. "Membership" does
792 not include those persons who are granted a membership upon making a contribution as the result of
793 solicitation.

794 "Parent organization" means that part of a charitable organization that coordinates, supervises, or
795 exercises control over policy, fund raising, and expenditures or assists or advises one or more chapters,
796 branches, or affiliates.

797 "Person" means any individual, organization, trust, foundation, association, partnership, corporation,
798 society, or other group or combination acting as a unit.

799 "Professional fund-raising counsel" means any person who for a flat fixed fee under a written
800 agreement plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or
801 indirectly, in connection with soliciting contributions for, or on behalf of, any charitable or civic
802 organization, but who actually solicits no contributions as a part of such services. A bona fide salaried
803 officer or employee of a registered or exempt charitable organization or the bona fide salaried officer or
804 employee of a registered parent organization shall not be deemed to be a professional fund-raising
805 counsel.

806 "Professional solicitor" means any person who, for a financial or other consideration, solicits
807 contributions for, or on behalf of, a charitable or civic organization, whether such solicitation is
808 performed personally or through his agents, servants, or employees or through agents, servants, or
809 employees who are specially employed by or for a charitable or civic organization and are engaged in
810 the solicitation of contributions under the direction of such person or any person who, for a financial or
811 other consideration, plans, conducts, manages, carries on, advises, or acts as a consultant to a charitable
812 or civic organization in connection with the solicitation of contributions but does not qualify as a
813 professional fund-raising counsel. A bona fide salaried officer or employee of a registered or exempt
814 charitable organization or a bona fide salaried officer or employee of a registered parent organization
815 shall not be deemed to be a professional solicitor.

816 "Sale," "sell," and "sold" mean the transfer of any property or the rendition of any service to any
817 person in exchange for consideration, including any purported contribution without which such property
818 would not have been transferred or such services would not have been rendered.

819 "Solicit" and "solicitation" mean the request or appeal, directly or indirectly, for any contribution on
820 the plea or representation that such contribution will be used for a charitable purpose, including, without
821 limitation, the following methods of requesting such contribution:

822 1. Any oral or written request;

823 2. Any announcement to the press, over the radio or television, or by telephone or telegraph
824 concerning an appeal or campaign to which the public is requested to make a contribution for any
825 charitable purpose connected therewith;

826 3. The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other
827 publication that directly or by implication seeks to obtain public support; or

828 4. The sale of, offer, or attempt to sell, any advertisement, advertising space, subscription, ticket, or
829 any service or tangible item in connection with which any appeal is made for any charitable purpose or
830 where the name of any charitable or civic organization is used or referred to in any such appeal as an
831 inducement or reason for making any such sale, or when or where in connection with any such sale, any
832 statement is made that the whole or any part of the proceeds from any such sale will be donated to any
833 charitable purpose.

834 "Solicitation," as defined in this section, shall be deemed to occur when the request is made, at the
835 place the request is received, whether or not the person making the same actually receives any
836 contribution.

837 "Terrorists and terrorist organizations" means any person, organization, group, or conspiracy who
838 assists or has assisted terrorist organizations, as provided in 18 U.S.C. § 2339B, or who commits or
839 attempts to commit acts of terrorism, as defined in § 18.2-46.4.

840 2. That §§ 18.2-62, 18.2-67.4:1, and 32.1-289.2 of the Code of Virginia are repealed.