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## SENATE BILL NO. 1443

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary)

(Patron Prior to Substitute—Senator Edwards)

Senate Amendments in [ ] - February 4, 2021

A *BILL to amend and reenact §§ 3.2-4212, 4.1-302, 16.1-253.2, 18.2-36.1, 18.2-36.2, 18.2-46.3:3, 18.2-51.1, 18.2-53.1, 18.2-57, 18.2-60.4, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.5:2, 18.2-67.5:3, 18.2-154, 18.2-186.4, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, as it is currently effective and as it shall become effective, 18.2-308.4, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 19.2-297.1, 46.2-341.28, 46.2-357, 46.2-391, 46.2-865.1, and 53.1-203 of the Code of Virginia, relating to elimination of mandatory minimum sentences; modification of sentence to mandatory minimum term of confinement for felony offenses.*

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

1. That §§ 3.2-4212, 4.1-302, 16.1-253.2, 18.2-36.1, 18.2-36.2, 18.2-46.3:3, 18.2-51.1, 18.2-53.1, 18.2-57, 18.2-60.4, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.5:2, 18.2-67.5:3, 18.2-154, 18.2-186.4, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, as it is currently effective and as it shall become effective, 18.2-308.4, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 19.2-297.1, 46.2-341.28, 46.2-357, 46.2-391, 46.2-865.1, and 53.1-203 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

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

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

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

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

**§ 16.1-253.2. Violation of provisions of protective orders; penalty.**

A. In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103, when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor. The punishment for any person convicted of a

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60 second offense of violating a protective order, when the offense is committed within five years of the  
61 prior conviction and when either the instant or prior offense was based on an act or threat of violence,  
62 shall include a ~~mandatory minimum~~ term of confinement of 60 days. Any person convicted of a third or  
63 subsequent offense of violating a protective order, when the offense is committed within 20 years of the  
64 first conviction and when either the instant or one of the prior offenses was based on an act or threat of  
65 violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of  
66 confinement of six months. The mandatory minimum terms of confinement prescribed for violations of  
67 this section shall be served consecutively with any other sentence.

68 B. In addition to any other penalty provided by law, any person who, while knowingly armed with a  
69 firearm or other deadly weapon, violates any provision of a protective order with which he has been  
70 served issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B  
71 of § 20-103 is guilty of a Class 6 felony.

72 C. If the respondent commits an assault and battery upon any party protected by the protective order  
73 resulting in bodily injury to the party or stalks any party protected by the protective order in violation of  
74 § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order by  
75 furtively entering the home of any protected party while the party is present, or by entering and  
76 remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in  
77 addition to any other penalty provided by law.

78 D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement  
79 is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire  
80 term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter  
81 a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date  
82 of conviction.

83 E. A violation of this section may be prosecuted in the jurisdiction where the protective order was  
84 issued or in any county or city where any act constituting the violation of the protective order occurred.

85 **§ 18.2-36.1. Certain conduct punishable as involuntary manslaughter.**

86 A. Any person who, as a result of driving under the influence in violation of clause (ii), (iii), or (iv)  
87 of § 18.2-266 or any local ordinance substantially similar thereto unintentionally causes the death of  
88 another person, shall be guilty of involuntary manslaughter.

89 B. If, in addition, the conduct of the defendant was so gross, wanton, and culpable as to show a  
90 reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony  
91 punishable by a term of imprisonment of not less than one nor more than 20 years; ~~one year of which~~  
92 ~~shall be a mandatory minimum term of imprisonment.~~

93 C. The provisions of this section shall not preclude prosecution under any other homicide statute.  
94 This section shall not preclude any other revocation or suspension required by law. The driver's license  
95 of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

96 **§ 18.2-36.2. Involuntary manslaughter; operating a watercraft while under the influence;**  
97 **penalties.**

98 A. Any person who, as a result of operating a watercraft or motorboat in violation of clause (ii), (iii),  
99 or (iv) of subsection B of § 29.1-738 or a similar local ordinance, unintentionally causes the death of  
100 another person, is guilty of involuntary manslaughter.

101 B. If, in addition, the conduct of the defendant was so gross, wanton, and culpable as to show a  
102 reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony  
103 punishable by a term of imprisonment of not less than one nor more than 20 years; ~~one year of which~~  
104 ~~shall be a mandatory minimum term of imprisonment.~~

105 C. The provisions of this section shall not preclude prosecution under any other homicide statute.  
106 The court shall order any person convicted under this section not to operate a watercraft or motorboat  
107 that is underway upon the waters of the Commonwealth. After five years have passed from the date of  
108 the conviction, the convicted person may petition the court that entered the conviction for the right to  
109 operate a watercraft or motorboat upon the waters of the Commonwealth. Upon consideration of such  
110 petition, the court may restore the right to operate a watercraft or motorboat subject to such terms and  
111 conditions as the court deems appropriate, including the successful completion of a water safety alcohol  
112 rehabilitation program described in § 29.1-738.5.

113 **§ 18.2-46.3:3. Enhanced punishment for gang activity taking place in a gang-free zone;**  
114 **penalties.**

115 Any person who violates ~~§ 18.2-46.2~~ (i) upon the property, including buildings and grounds, of any  
116 public or private elementary, secondary, or postsecondary school or institution of higher education; (ii)  
117 upon public property or any property open to public use within 1,000 feet of such school property; (iii)  
118 on any school bus as defined in § 46.2-100; or (iv) upon the property, including buildings and grounds,  
119 of any publicly owned or operated community center or any publicly owned or operated recreation  
120 center is guilty of a felony punishable as specified in ~~§ 18.2-46.2~~, and shall be sentenced to a mandatory  
121 minimum term of imprisonment of two years to be served consecutively with any other sentence. A

person who violates subsection A of § 18.2-46.3 [ ~~upon any property listed in this section~~ (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or postsecondary school or institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; or (iv) upon the property, including buildings and grounds, of any publicly owned or operated community center or any publicly owned or operated recreation center ] is guilty of a Class 6 felony, except that any person 18 years of age or older who violates subsection A of § 18.2-46.3 upon any property listed in this section, when such offense is committed against a juvenile, is guilty of a Class 5 felony. Any person who violates subsection B of § 18.2-46.3 upon any property listed in this section is guilty of a Class 5 felony. It is a violation of this section if the person violated § 18.2-46.2 or 18.2-46.3 on the property described in clauses (i) through (iii) regardless of where the person intended to commit such violation.

**§ 18.2-51.1. Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical services personnel; lesser-included offense.**

If any person maliciously causes bodily injury to another by any means including the means set out in § 18.2-52, with intent to maim, disfigure, disable, or kill, and knowing or having reason to know that such other person is a law-enforcement officer, as defined hereinafter, firefighter, as defined in § 65.2-102, search and rescue personnel as defined hereinafter, or emergency medical services personnel, as defined in § 32.1-111.1 engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, such person is guilty of a felony punishable by imprisonment for a period of not less than five years nor more than 30 years and, subject to subdivision (g) of § 18.2-10, a fine of not more than \$100,000. ~~Upon conviction, the sentence of such person shall include a mandatory minimum term of imprisonment of two years.~~

If any person unlawfully, but not maliciously, with the intent aforesaid, causes bodily injury to another by any means, knowing or having reason to know such other person is a law-enforcement officer, firefighter, as defined in § 65.2-102, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel as defined in § 32.1-111.1, he is guilty of a Class 6 felony, ~~and upon conviction, the sentence of such person shall include a mandatory minimum term of imprisonment of one year.~~

Nothing in this section shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

As used in this section, "law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; any conservation police officer appointed pursuant to § 29.1-200; and auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

As used in this section, "search and rescue personnel" means any employee or member of a search and rescue organization that is authorized by a resolution or ordinance duly adopted by the governing body of any county, city, or town of the Commonwealth or any member of a search and rescue organization operating under a memorandum of understanding with the Virginia Department of Emergency Management.

The provisions of § 18.2-51 shall be deemed to provide a lesser-included offense hereof.

**§ 18.2-53.1. Use or display of firearm in committing felony.**

It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2, robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in § 18.2-51.2, malicious wounding by mob as defined in § 18.2-41, or abduction. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a ~~mandatory minimum term of imprisonment of three years is punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both, for a first conviction, and to a mandatory minimum term of five years is punishable as a Class 6 felony~~ for a second or subsequent conviction under the provisions of this section. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

**§ 18.2-57. Assault and battery; penalty.**

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin, the penalty upon conviction shall include a term of confinement of at least six months.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice, an employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency, regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or emergency medical services personnel as employees, engaged in the performance of his public duties anywhere in the Commonwealth, such person is guilty of a Class 6 felony; ~~and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.~~

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time employee of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail; ~~two days of which shall be a mandatory minimum term of confinement.~~ However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum sentence of *penalty upon conviction shall include a term of* confinement of six months.

E. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the performance of his duties in a hospital or in an emergency room on the premises of any clinic or other facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15 days in jail; ~~two days of which shall be a mandatory minimum term of confinement.~~

F. As used in this section:

"Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities.

"Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

"Judge" means any justice or judge of a court of record of the Commonwealth including a judge designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers' Compensation Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district court.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any employee with internal investigations authority designated by the Department of

Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

"School security officer" means the same as that term is defined in § 9.1-101.

G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a school security officer or full-time or part-time employee of any public or private elementary or secondary school at the time of the event.

#### **§ 18.2-60.4. Violation of protective orders; penalty.**

A. Any person who violates any provision of a protective order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. The punishment for any person convicted of a second offense of violating a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a ~~mandatory minimum~~ term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence, is guilty of a Class 6 felony ~~and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.~~

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, other than a protective order issued pursuant to subsection C of § 19.2-152.10, is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

~~D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.~~

~~E. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction.~~

~~F. E. A violation of this section may be prosecuted in the jurisdiction where the protective order was issued or in any county or city where any act constituting the violation of the protective order occurred.~~

#### **§ 18.2-61. Rape.**

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by

306 confinement in a state correctional facility for life or for any term not less than five years; and in  
307 addition:

308 1. For a violation of clause (iii) of subsection A where the offender is more than three years older  
309 than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of  
310 a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89,  
311 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a ~~mandatory minimum~~ term of  
312 confinement of 25 years; or

313 2. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the  
314 offender was 18 years of age or older at the time of the offense, the punishment shall include a  
315 ~~mandatory minimum~~ term of confinement for life.

316 The ~~mandatory minimum~~ terms of confinement prescribed for violations of this section shall be  
317 served consecutively with any other sentence. If the term of confinement imposed for any violation of  
318 clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a  
319 term less than life imprisonment, the judge ~~shall~~ may impose, in addition to any active sentence, a  
320 suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the  
321 remainder of the defendant's life, subject to revocation by the court.

322 There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not  
323 possess the physical capacity to commit a violation of this section. In any case deemed appropriate by  
324 the court, all or part of any sentence imposed for a violation under this section against a spouse may be  
325 suspended upon the defendant's completion of counseling or therapy, if not already provided, in the  
326 manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and  
327 such other evidence as may be relevant, the court finds such action will promote maintenance of the  
328 family unit and will be in the best interest of the complaining witness.

329 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case  
330 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the  
331 defendant who has not previously had a proceeding against him for violation of this section dismissed  
332 pursuant to this subsection and with the consent of the complaining witness and the attorney for the  
333 Commonwealth, may defer further proceedings and place the defendant on probation pending completion  
334 of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the  
335 defendant fails to so complete such counseling or therapy, the court may make final disposition of the  
336 case and proceed as otherwise provided. If such counseling is completed as prescribed under  
337 § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after  
338 consideration of the views of the complaining witness and such other evidence as may be relevant, the  
339 court finds such action will promote maintenance of the family unit and be in the best interest of the  
340 complaining witness.

341 **§ 18.2-67.1. Forcible sodomy.**

342 A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio,  
343 anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a  
344 complaining witness, whether or not his or her spouse, to engage in such acts with any other person,  
345 and

346 1. The complaining witness is less than 13 years of age; or

347 2. The act is accomplished against the will of the complaining witness, by force, threat or  
348 intimidation of or against the complaining witness or another person, or through the use of the  
349 complaining witness's mental incapacity or physical helplessness.

350 B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or  
351 for any term not less than five years; and in addition:

352 1. For a violation of subdivision A 1, where the offender is more than three years older than the  
353 victim, if done in the commission of, or as part of the same course of conduct as, or as part of a  
354 common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89,  
355 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a ~~mandatory minimum~~ term of  
356 confinement of 25 years; or

357 2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18  
358 years of age or older at the time of the offense, the punishment shall include a ~~mandatory minimum~~  
359 term of confinement for life.

360 The ~~mandatory minimum~~ terms of confinement prescribed for violations of this section shall be  
361 served consecutively with any other sentence. If the term of confinement imposed for any violation of  
362 subdivision A 1, where the offender is more than three years older than the victim, is for a term less  
363 than life imprisonment, the judge ~~shall~~ may impose, in addition to any active sentence, a suspended  
364 sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the  
365 defendant's life, subject to revocation by the court.

366 In any case deemed appropriate by the court, all or part of any sentence imposed for a violation  
367 under this section against a spouse may be suspended upon the defendant's completion of counseling or

therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

**§ 18.2-67.2. Object sexual penetration; penalty.**

A. An accused shall be guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own body with an object or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person or to penetrate, or to be penetrated by, an animal, and

1. The complaining witness is less than 13 years of age; or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a ~~mandatory minimum~~ term of confinement of 25 years; or

2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a ~~mandatory minimum~~ term of confinement for life.

~~The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.~~ If the term of confinement imposed for any violation of subdivision A 1, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge ~~shall~~ *may* impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

**§ 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.**

429 A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the  
430 offenses specified in subsection B of this section and one of the offenses specified in subsection B of  
431 § 18.2-67.5:3 when such offenses were not part of a common act, transaction, or scheme and who has  
432 been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or  
433 subsequent such offense, be sentenced to the maximum term authorized by statute for such offense ~~and~~  
434 ~~shall not have all or any part of such sentence suspended~~, provided that it is admitted, or found by the  
435 jury or judge before whom the person is tried, that he has been previously convicted of at least one of  
436 the specified offenses.

437 B. The provisions of subsection A shall apply to felony convictions for:

438 1. Carnal knowledge of a child between 13 and 15 years of age in violation of § 18.2-63 when the  
439 offense is committed by a person over the age of 18;

440 2. Carnal knowledge of certain minors in violation of § 18.2-64.1;

441 3. Aggravated sexual battery in violation of § 18.2-67.3;

442 4. Crimes against nature in violation of subsection B of § 18.2-361;

443 5. Sexual intercourse with one's own child or grandchild in violation of § 18.2-366;

444 6. Taking indecent liberties with a child in violation of § 18.2-370 or 18.2-370.1; or

445 7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to § 18.2-22.

446 C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under  
447 the laws of any state or the United States that are substantially similar to those listed in subsection B  
448 and (ii) findings of not innocent, adjudications, or convictions in the case of a juvenile if the juvenile  
449 offense is substantially similar to those listed in subsection B, the offense would be a felony if  
450 committed by an adult in the Commonwealth, and the offense was committed less than 20 years before  
451 the second offense.

452 The Commonwealth shall notify the defendant in writing, at least 30 days prior to trial, of its  
453 intention to seek punishment pursuant to this section.

454 **§ 18.2-67.5:3. Punishment upon conviction of certain subsequent violent felony sexual assault.**

455 A. Any person convicted of more than one offense specified in subsection B, when such offenses  
456 were not part of a common act, transaction, or scheme, and who has been at liberty as defined in  
457 § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be  
458 sentenced to life imprisonment ~~and shall not have all or any portion of the sentence suspended~~, provided  
459 it is admitted, or found by the jury or judge before whom he is tried, that he has been previously  
460 convicted of at least one of the specified offenses.

461 B. The provisions of subsection A shall apply to convictions for:

462 1. Rape in violation of § 18.2-61;

463 2. Forcible sodomy in violation of § 18.2-67.1;

464 3. Object sexual penetration in violation of § 18.2-67.2;

465 4. Abduction with intent to defile in violation of § 18.2-48; or

466 5. Conspiracy to commit any offense listed in subdivisions 1 through 4 pursuant to § 18.2-22.

467 C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under  
468 the laws of any state or the United States that are substantially similar to those listed in subsection B  
469 and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile  
470 offense is substantially similar to those listed in subsection B, the offense would be a felony if  
471 committed by an adult in the Commonwealth and the offense was committed less than ~~twenty~~ 20 years  
472 before the second offense.

473 The Commonwealth shall notify the defendant in the indictment, information, or warrant, at least  
474 ~~thirty~~ 30 days prior to trial, of its intention to seek punishment pursuant to this section.

475 **§ 18.2-154. Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty.**

476 Any person who maliciously shoots at, or maliciously throws any missile at or against, any train or  
477 cars on any railroad or other transportation company or any vessel or other watercraft, or any motor  
478 vehicle or other vehicles when occupied by one or more persons, whereby the life of any person on  
479 such train, car, vessel, or other watercraft, or in such motor vehicle or other vehicle, may be put in peril,  
480 is guilty of a Class 4 felony. In the event of the death of any such person, resulting from such malicious  
481 shooting or throwing, the person so offending is guilty of murder in the second degree. However, if the  
482 homicide is willful, deliberate, and premeditated, he is guilty of murder in the first degree.

483 If any such act is committed unlawfully, but not maliciously, the person so offending is guilty of a  
484 Class 6 felony and, in the event of the death of any such person, resulting from such unlawful act, the  
485 person so offending is guilty of involuntary manslaughter.

486 If any person commits a violation of this section by maliciously or unlawfully shooting, with a  
487 firearm, at a conspicuously marked law-enforcement, fire, or emergency medical services vehicle, the  
488 sentence imposed shall include a ~~mandatory minimum~~ term of imprisonment of one year ~~to be served~~  
489 ~~consecutively with any other sentence~~.

490 **§ 18.2-186.4. Use of a person's identity with the intent to coerce, intimidate, or harass; penalty.**

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

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

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

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

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

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

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

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

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

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

- a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;
- b. The person did not use violence or credible threats of violence or possess a firearm or other

dangerous weapon in connection with the offense or induce another participant in the offense to do so;

e. The offense did not result in death or serious bodily injury to any person;

d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I; and

e. Not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

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

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

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

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

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

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

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

the controlled substance to use or become addicted to or dependent upon such controlled substance, is guilty of a Class 1 misdemeanor.

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

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

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

1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;
2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:
  - a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

725 detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

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

728 H2. Any person who was the principal or one of several principal administrators, organizers or  
 729 leaders of a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross  
 730 receipts during any 12-month period of its existence from the manufacture, importation, or distribution  
 731 of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of  
 732 isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give,  
 733 distribute or possess with the intent to manufacture, sell, give or distribute the following during any  
 734 12-month period of its existence:

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

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

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

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

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

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

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

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

746 5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0  
 747 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts,  
 748 isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1  
 749 million and imprisonment for life, ~~which shall be served with no suspension in whole or in part. Such~~  
 750 ~~punishment shall be made to run consecutively with any other sentence.~~ However, the court may impose  
 751 a ~~mandatory minimum~~ sentence of 40 years if the court finds that the defendant substantially cooperated  
 752 with law-enforcement authorities.

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

761 J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any  
 762 two or more different substances listed below with the intent to manufacture methamphetamine,  
 763 methcathinone, or amphetamine is guilty of a Class 6 felony: liquefied ammonia gas, ammonium nitrate,  
 764 ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture  
 765 of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium,  
 766 sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium  
 767 permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or  
 768 2-propanone.

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

772 **§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.**

773 Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) it is unlawful for any person to  
 774 transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of  
 775 cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II  
 776 of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance or five  
 777 or more pounds of marijuana. A violation of this section shall constitute a separate and distinct felony.  
 778 Upon conviction, the person shall be sentenced to not less than five years nor more than 40 years  
 779 imprisonment, ~~three years of which shall be a mandatory minimum term of imprisonment,~~ and a fine not  
 780 to exceed \$1,000,000. A second or subsequent conviction hereunder shall be punishable by a ~~mandatory~~  
 781 ~~minimum~~ term of imprisonment of ~~not less than 10 years nor more than 40 years; which shall be served~~  
 782 ~~consecutively with any other sentence.~~

783 **§ 18.2-248.03. Manufacturing, selling, giving, distributing, or possessing with intent to**  
 784 **manufacture, sell, give, or distribute methamphetamine; penalty.**

785 A. Notwithstanding any other provision of law, any person who manufactures, sells, gives,  
 786 distributes, or possesses with intent to manufacture, sell, give, or distribute 28 grams or more of a

mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a felony punishable by a fine of not more than \$500,000 and imprisonment for not less than five nor more than 40 years, ~~three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty.**

A. Except as authorized in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, it shall be unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any drug classified in Schedule I, II, III, or IV or marijuana to any person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any drug classified in Schedule I, II, III, or IV or marijuana. Any person violating this provision shall upon conviction be imprisoned in a state correctional facility for a period not less than 10 nor more than 50 years, and fined not more than \$100,000. ~~Five years of the sentence imposed for a conviction under this section involving a Schedule I or II controlled substance or one ounce or more of marijuana shall be a mandatory minimum sentence. Two years of the sentence imposed for a conviction~~

800 under this section involving less than one ounce of marijuana shall be a mandatory minimum sentence.

801 B. It shall be unlawful for any person who is at least 18 years of age to knowingly or intentionally  
802 (i) distribute any imitation controlled substance to a person under 18 years of age who is at least three  
803 years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any  
804 imitation controlled substance. Any person violating this provision shall be guilty of a Class 6 felony.

805 **§ 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties;**  
806 **penalty.**

807 A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell,  
808 give or distribute any controlled substance, imitation controlled substance, or marijuana while:

809 1. (Effective until July 1, 2021) Upon the property, including buildings and grounds, of any public or  
810 private elementary or secondary school, any institution of higher education, or any clearly marked  
811 licensed child day center as defined in § 63.2-100;

812 1. (Effective July 1, 2021) Upon the property, including buildings and grounds, of any public or  
813 private elementary or secondary school, any institution of higher education, or any clearly marked  
814 licensed child day center as defined in § 22.1-289.02;

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

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

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

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

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

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

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

845 **§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.**

846 A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be  
847 guilty of a Class 1 misdemeanor with a mandatory minimum fine of \$250. If the person's blood alcohol  
848 level as indicated by the chemical test administered as provided in this article or by any other  
849 scientifically reliable chemical test performed on whole blood under circumstances reliably establishing  
850 the identity of the person who is the source of the blood and the accuracy of the results (i) was at least  
851 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period  
852 of five days or, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 10  
853 days.

854 B. 1. Any person convicted of a second offense committed within less than five years after a prior  
855 offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory  
856 minimum fine of \$500 and by confinement in jail for not less than one month nor more than one year.  
857 Twenty days of such confinement shall be a mandatory minimum sentence.

858 2. Any person convicted of a second offense committed within a period of five to 10 years of a prior  
859 offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory  
860 minimum fine of \$500 and by confinement in jail for not less than one month. Ten days of such  
861 confinement shall be a mandatory minimum sentence.

3. Upon conviction of a second offense within 10 years of a prior offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of 10 days or; (ii) if the level was more than 0.20, for an additional mandatory minimum period of 20 days. In addition, such person shall be fined a mandatory minimum fine of \$500.

C. 1. Any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall upon conviction of the third offense be guilty of a Class 6 felony. The sentence of any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall include a mandatory minimum sentence of 90 days, unless the three offenses were committed within a five-year period, in which case the sentence shall include a mandatory minimum sentence of confinement for six months. In addition, such person shall be fined a mandatory minimum fine of \$1,000.

2. A person who has been convicted of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, or a felony violation of § 18.2-266 shall upon conviction of a subsequent violation of § 18.2-266 be guilty of a Class 6 felony. The punishment of any person convicted of such a subsequent violation of § 18.2-266 shall include a mandatory minimum term of imprisonment of one year and a mandatory minimum fine of \$1,000.

3. The punishment of any person convicted of a fourth or subsequent offense of § 18.2-266 committed within a 10-year period shall, upon conviction, include a mandatory minimum term of imprisonment of one year. In addition, such person shall be fined a mandatory minimum fine of \$1,000.

4. The vehicle solely owned and operated by the accused during the commission of a felony violation of § 18.2-266 shall be subject to seizure and forfeiture. After an arrest for a felony violation of § 18.2-266, the Commonwealth may file an information in accordance with § 19.2-386.34.

D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1,000 and (ii) sentenced to a mandatory minimum period of confinement of five days.

E. For the purpose of determining the number of offenses committed by, and the punishment appropriate for, a person under this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

F. Mandatory minimum punishments imposed pursuant to this section shall be cumulative, and mandatory minimum terms of confinement shall be served consecutively. However, in no case shall punishment imposed hereunder exceed the applicable statutory maximum Class 1 misdemeanor term of confinement or fine upon conviction of a first or second offense, or Class 6 felony term of confinement or fine upon conviction of a third or subsequent offense.

### **§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited; penalty.**

A. If any person knowingly possesses any (i) stun weapon as defined in this section; (ii) knife, except a pocket knife having a folding metal blade of less than three inches; or (iii) weapon, including a weapon of like kind, designated in subsection A of § 18.2-308, other than a firearm; upon (a) the property of any child day center or public, private, or religious preschool, elementary, middle, or high school, including buildings and grounds; (b) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (c) any school bus owned or operated by any such school, he is guilty of a Class 1 misdemeanor.

B. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) the property of any child day center or public, private, or religious preschool, elementary, middle, or high school, including buildings and grounds; (ii) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (iii) any school bus owned or operated by any such school, he is guilty of a Class 6 felony.

C. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material within the building of a child day center or public, private, or religious preschool, elementary, middle, or high school and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person is guilty of a Class 6 felony

921 and sentenced to a mandatory minimum term of imprisonment of five years to be served consecutively  
922 with any other sentence.

923 D. The child day center and private or religious preschool provisions of this section (i) shall apply  
924 only during the operating hours of such child day center or private or religious preschool and (ii) shall  
925 not apply to any person (a) whose residence is on the property of a child day center or a private or  
926 religious preschool and (b) who possesses a firearm or other weapon prohibited under this section while  
927 in his residence.

928 E. The exemptions set out in §§ 18.2-308 and 18.2-308.016 shall apply, mutatis mutandis, to the  
929 provisions of this section. The provisions of this section shall not apply to (i) persons who possess such  
930 weapon or weapons as a part of the school's curriculum or activities; (ii) a person possessing a knife  
931 customarily used for food preparation or service and using it for such purpose; (iii) persons who possess  
932 such weapon or weapons as a part of any program sponsored or facilitated by either the school or any  
933 organization authorized by the school to conduct its programs either on or off the school premises; (iv)  
934 any law-enforcement officer, or retired law-enforcement officer qualified pursuant to subsection C of  
935 § 18.2-308.016; (v) any person who possesses a knife or blade which he uses customarily in his trade;  
936 (vi) a person who possesses an unloaded firearm or a stun weapon that is in a closed container, or a  
937 knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms  
938 rack in or upon a motor vehicle; (vii) a person who has a valid concealed handgun permit and possesses  
939 a concealed handgun or a stun weapon while in a motor vehicle in a parking lot, traffic circle, or other  
940 means of vehicular ingress or egress to the school; (viii) a school security officer authorized to carry a  
941 firearm pursuant to § 22.1-280.2:1; or (ix) an armed security officer, licensed pursuant to Article 4  
942 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, hired by a child day center or a private or religious school  
943 for the protection of students and employees as authorized by such school. For the purposes of this  
944 subsection, "weapon" includes a knife having a metal blade of three inches or longer and "closed  
945 container" includes a locked vehicle trunk.

946 F. Nothing in subsection E or any other provision of law shall be construed as providing an  
947 exemption to the provisions of this section for a special conservator of the peace appointed pursuant to  
948 § 19.2-13, other than the specifically enumerated exemptions that apply to the general population as  
949 provided in subsection E.

950 G. As used in this section:

951 "Child day center" means a child day center, as defined in § 22.1-289.02, that is licensed in  
952 accordance with the provisions of Chapter 14.1 (§ 22.1-289.02 et seq.) of Title 22.1 and is not operated  
953 at the residence of the provider or of any of the children.

954 "Stun weapon" means any device that emits a momentary or pulsed output, which is electrical,  
955 audible, optical or electromagnetic in nature and which is designed to temporarily incapacitate a person.

956 **§ 18.2-308.2. (Effective January 1, 2021) Possession or transportation of firearms, firearms**  
957 **ammunition, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition**  
958 **for restoration order; when issued.**

959 A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person  
960 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in  
961 violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or  
962 presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person  
963 under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of  
964 the offense of a delinquent act which would be a felony if committed by an adult, other than those  
965 felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the  
966 Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof,  
967 to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun  
968 weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry  
969 about his person, hidden from common observation, any weapon described in subsection A of  
970 § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as  
971 defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony.  
972 However, any person who violates this section by knowingly and intentionally possessing or transporting  
973 any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be  
974 sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this  
975 section by knowingly and intentionally possessing or transporting any firearm and who was previously  
976 convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum  
977 term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for  
978 violations of this section shall be served consecutively with any other sentence.

979 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm,  
980 ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member  
981 of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii)  
982 any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or

whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms, (iv) any person whose right to possess firearms or ammunition has been restored under the law of another state subject to conditions placed upon the reinstatement of the person's right to ship, transport, possess, or receive firearms by such state, or (v) any person adjudicated delinquent as a juvenile who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or (ii) of subsection A.

C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying offense pursuant to subsection A, for a restoration order that unconditionally authorizes possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon; however, no person who has been convicted of a felony shall be qualified to petition for such an order unless his civil rights have been restored by the Governor or other appropriate authority. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The court may, in its discretion and for good cause shown, grant such petition and issue a restoration order. Such order shall contain the petitioner's name and date of birth. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange (CCRE), on a form provided by the CCRE, a copy of the order to be accompanied by a complete set of the petitioner's fingerprints. The Department of State Police shall forthwith enter the petitioner's name and description in the CCRE so that the order's existence will be made known to law-enforcement personnel accessing the computerized criminal history records for investigative purposes. The provisions of this section relating to firearms, ammunition for a firearm, and stun weapons shall not apply to any person who has been issued a restoration order pursuant to this subsection.

C1. Any person who was prohibited from possessing, transporting or carrying explosive material under subsection A may possess, transport or carry such explosive material if his right to possess, transport or carry explosive material has been restored pursuant to federal law.

C2. The prohibitions of subsection A shall not prohibit any person other than a person convicted of an act of violence as defined in § 19.2-297.1 or a violent felony as defined in subsection C of § 17.1-805 from possessing, transporting, or carrying (i) antique firearms or (ii) black powder in a quantity not exceeding five pounds if it is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms. For the purposes of this subsection, "antique firearms" means any firearm described in subdivision 3 of the definition of "antique firearm" in subsection F of § 18.2-308.2:2.

D. For the purpose of this section:

"Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant designed for use in a firearm other than an antique firearm as defined in § 18.2-308.2:2.

"Explosive material" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and detonating cord but shall not include fireworks or permissible fireworks as defined in § 27-95.

**§ 18.2-308.2:2. (Effective until July 1, 2021) Criminal history record information check required for the transfer of certain firearms.**

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been

1044 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and  
1045 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of  
1046 any other jurisdiction, been involuntarily admitted to an inpatient facility or involuntarily ordered to  
1047 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3  
1048 or any substantially similar law of any other jurisdiction, or been the subject of a temporary detention  
1049 order pursuant to § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805;  
1050 and (iv) is the applicant subject to an emergency substantial risk order or a substantial risk order entered  
1051 pursuant to § 19.2-152.13 or 19.2-152.14 and prohibited from purchasing, possessing, or transporting a  
1052 firearm pursuant to § 18.2-308.1:6 or any substantially similar law of any other jurisdiction.

1053 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other  
1054 person who is a resident of Virginia until he has (i) obtained written consent and the other information  
1055 on the consent form specified in subsection A, and provided the Department of State Police with the  
1056 name, birth date, gender, race, citizenship, and social security and/or any other identification number and  
1057 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested  
1058 criminal history record information by a telephone call to or other communication authorized by the  
1059 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish  
1060 personal identification and residence in Virginia for purposes of this section, a dealer must require any  
1061 prospective purchaser to present one photo-identification form issued by a governmental agency of the  
1062 Commonwealth or by the United States Department of Defense that demonstrates that the prospective  
1063 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm  
1064 purchase, residency of a member of the armed forces shall include both the state in which the member's  
1065 permanent duty post is located and any nearby state in which the member resides and from which he  
1066 commutes to the permanent duty post. A member of the armed forces whose photo identification issued  
1067 by the Department of Defense does not have a Virginia address may establish his Virginia residency  
1068 with such photo identification and either permanent orders assigning the purchaser to a duty post,  
1069 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo  
1070 identification presented to a dealer by the prospective purchaser is a driver's license or other photo  
1071 identification issued by the Department of Motor Vehicles, and such identification form contains a date  
1072 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by  
1073 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until  
1074 30 days after the date of issue of an original or duplicate driver's license unless the prospective  
1075 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing  
1076 that the original date of issue of the driver's license was more than 30 days prior to the attempted  
1077 purchase.

1078 In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any  
1079 person who is not a citizen of the United States or who is not a person lawfully admitted for permanent  
1080 residence.

1081 Upon receipt of the request for a criminal history record information check, the State Police shall (a)  
1082 review its criminal history record information to determine if the buyer or transferee is prohibited from  
1083 possessing or transporting a firearm by state or federal law, (b) inform the dealer if its record indicates  
1084 that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number  
1085 for that inquiry.

1086 2. The State Police shall provide its response to the requesting dealer during the dealer's request or  
1087 by return call without delay. A dealer who fulfills the requirements of subdivision 1 and is told by the  
1088 State Police that a response will not be available by the end of the dealer's third business day may  
1089 immediately complete the sale or transfer and shall not be deemed in violation of this section with  
1090 respect to such sale or transfer.

1091 3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer  
1092 than 30 days, except for multiple handgun transactions for which records shall be maintained for 12  
1093 months, from any dealer's request for a criminal history record information check pertaining to a buyer  
1094 or transferee who is not found to be prohibited from possessing and transporting a firearm under state or  
1095 federal law. However, the log on requests made may be maintained for a period of 12 months, and such  
1096 log shall consist of the name of the purchaser, the dealer identification number, the unique approval  
1097 number and the transaction date.

1098 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or  
1099 deliver the written consent form required by subsection A to the Department of State Police. The State  
1100 Police shall immediately initiate a search of all available criminal history record information to  
1101 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal  
1102 law. If the search discloses information indicating that the buyer or transferee is so prohibited from  
1103 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in  
1104 the jurisdiction where the sale or transfer occurred and the dealer without delay.

1105 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by

persons who are citizens of the United States or persons lawfully admitted for permanent residence but residents of other states under the terms of subsections A and B upon furnishing the dealer with one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's third business day" shall not include December 25.

C. No dealer shall sell, rent, trade, or transfer from his inventory any firearm, except when the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5, to any person who is a dual resident of Virginia and another state pursuant to applicable federal law unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law.

To establish personal identification and dual resident eligibility for purposes of this subsection, a dealer shall require any prospective purchaser to present one photo-identification form issued by a governmental agency of the prospective purchaser's state of legal residence and other documentation of dual residence within the Commonwealth. The other documentation of dual residence in the Commonwealth may include (i) evidence of currently paid personal property tax or real estate tax or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; (ii) other current identification allowed as evidence of residency by 27 C.F.R. § 178.124 and ATF Ruling 2001-5; or (iii) other documentation of residence determined to be acceptable by the Department of Criminal Justice Services and that corroborates that the prospective purchaser currently resides in Virginia.

D. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 days of such denial.

E. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section shall be guilty of a Class 2 misdemeanor.

F. For purposes of this section:

"Actual buyer" means a person who executes the consent form required in subsection B or C, or other such firearm transaction records as may be required by federal law.

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

4. Any curio or relic as defined in this subsection.

"Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

"Curios or relics" means firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event.

1167 Proof of qualification of a particular firearm under this category may be established by evidence of  
1168 present value and evidence that like firearms are not available except as collectors' items, or that the  
1169 value of like firearms available in ordinary commercial channels is substantially less.

1170 "Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

1171 "Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be  
1172 converted to expel single or multiple projectiles by action of an explosion of a combustible material.

1173 "Handgun" means any pistol or revolver or other firearm originally designed, made and intended to  
1174 fire single or multiple projectiles by means of an explosion of a combustible material from one or more  
1175 barrels when held in one hand.

1176 "Lawfully admitted for permanent residence" means the status of having been lawfully accorded the  
1177 privilege of residing permanently in the United States as an immigrant in accordance with the  
1178 immigration laws, such status not having changed.

1179 G. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity,  
1180 confidentiality and security of all records and data provided by the Department of State Police pursuant  
1181 to this section.

1182 H. The provisions of this section shall not apply to (i) transactions between persons who are licensed  
1183 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)  
1184 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth  
1185 or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of  
1186 Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

1187 I. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a  
1188 resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another  
1189 state, in which case the laws and regulations of that state and the United States governing the purchase,  
1190 trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS)  
1191 check shall be performed prior to such purchase, trade or transfer of firearms.

1192 J. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal  
1193 history record information check is required pursuant to this section, except that a fee of \$5 shall be  
1194 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the  
1195 Department of State Police by the last day of the month following the sale for deposit in a special fund  
1196 for use by the State Police to offset the cost of conducting criminal history record information checks  
1197 under the provisions of this section.

1198 K. Any person willfully and intentionally making a materially false statement on the consent form  
1199 required in subsection B or C or on such firearm transaction records as may be required by federal law,  
1200 shall be guilty of a Class 5 felony.

1201 L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades  
1202 or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

1203 L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or  
1204 otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and  
1205 intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not  
1206 apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the  
1207 performance of his official duties, or other person under his direct supervision.

1208 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such  
1209 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise  
1210 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the  
1211 Commonwealth to be resold or otherwise provided to another person who the transferor knows is  
1212 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to  
1213 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection  
1214 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory  
1215 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the  
1216 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to  
1217 § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,  
1218 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

1219 N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the  
1220 Commonwealth who solicits, employs, or assists any person in violating subsection M shall be guilty of  
1221 a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

1222 O. Any mandatory minimum sentence imposed under this section shall be served consecutively with  
1223 any other sentence.

1224 P. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating  
1225 whether the driver's license is an original, duplicate or renewed driver's license.

1226 Q. P. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his  
1227 inventory to any other person, a dealer may require such other person to consent to have the dealer  
1228 obtain criminal history record information to determine if such other person is prohibited from

possessing or transporting a firearm by state or federal law. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police, and the processes established for making such determinations shall conform to the provisions of this section.

R. Q. Except as provided in subdivisions 1 and 2, it shall be unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period. For the purposes of this subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange or replacement within the 30-day period immediately preceding the date of exchange or replacement. A violation of this subsection is punishable as a Class 1 misdemeanor.

1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an enhanced background check, as described in this subsection, by special application to the Department of State Police listing the number and type of handguns to be purchased and transferred for lawful business or personal use, in a collector series, for collections, as a bulk purchase from estate sales, and for similar purposes. Such applications shall be signed under oath by the applicant on forms provided by the Department of State Police, shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales report required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above the limit.

Upon being satisfied that these requirements have been met, the Department of State Police shall immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B 3.

2. The provisions of this subsection shall not apply to:

- a. A law-enforcement agency;
- b. An agency duly authorized to perform law-enforcement duties;
- c. A state or local correctional facility;
- d. A private security company licensed to do business within the Commonwealth;
- e. The purchase of antique firearms;
- f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, a description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police;
- g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day;
- h. A person who holds a valid Virginia permit to carry a concealed handgun;
- i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection of curios or relics or who sells all or part of such collection of curios and relics; or
- j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and

the enforcement of the penal, traffic, or highway laws of the Commonwealth.

**§ 18.2-308.2:2. (Effective July 1, 2021) Criminal history record information check required for the transfer of certain firearms.**

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated, or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction, or been the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805; and (iv) is the applicant subject to an emergency substantial risk order or a substantial risk order entered pursuant to § 19.2-152.13 or 19.2-152.14 and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:6 or any substantially similar law of any other jurisdiction.

B. 1. No dealer shall sell, rent, trade, or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent and the other information on the consent form specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, citizenship, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded, or transferred and (ii) requested criminal history record information by a telephone call to or other communication authorized by the State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense that demonstrates that the prospective purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm purchase, residency of a member of the armed forces shall include both the state in which the member's permanent duty post is located and any nearby state in which the member resides and from which he commutes to the permanent duty post. A member of the armed forces whose photo identification issued by the Department of Defense does not have a Virginia address may establish his Virginia residency with such photo identification and either permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo identification presented to a dealer by the prospective purchaser is a driver's license or other photo identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence.

Upon receipt of the request for a criminal history record information check, the State Police shall (a) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (b) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's request or by return call without delay. A dealer who fulfills the requirements of subdivision 1 and is told by the State Police that a response will not be available by the end of the dealer's third business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of 12 months, and such log shall consist of the name of the purchaser, the dealer identification number, the unique approval number, and the transaction date.

4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by persons who are citizens of the United States or persons lawfully admitted for permanent residence but residents of other states under the terms of subsections A and B upon furnishing the dealer with one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's third business day" does not include December 25.

C. No dealer shall sell, rent, trade, or transfer from his inventory any firearm, except when the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5, to any person who is a dual resident of Virginia and another state pursuant to applicable federal law unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law.

To establish personal identification and dual resident eligibility for purposes of this subsection, a dealer shall require any prospective purchaser to present one photo-identification form issued by a governmental agency of the prospective purchaser's state of legal residence and other documentation of dual residence within the Commonwealth. The other documentation of dual residence in the Commonwealth may include (i) evidence of currently paid personal property tax or real estate tax or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; (ii) other current identification allowed as evidence of residency by 27 C.F.R. § 178.124 and ATF Ruling 2001-5; or (iii) other documentation of residence determined to be acceptable by the Department of Criminal Justice Services and that corroborates that the prospective purchaser currently resides in Virginia.

D. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 days of such denial.

E. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section, shall be guilty of a Class 2 misdemeanor.

F. For purposes of this section:

"Actual buyer" means a person who executes the consent form required in subsection B or C, or other such firearm transaction records as may be required by federal law.

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

1413 4. Any curio or relic as defined in this subsection.

1414 "Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple  
1415 projectiles by action of an explosion of a combustible material and is equipped at the time of the  
1416 offense with a magazine which will hold more than 20 rounds of ammunition or designed by the  
1417 manufacturer to accommodate a silencer or equipped with a folding stock.

1418 "Curios or relics" means firearms that are of special interest to collectors by reason of some quality  
1419 other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To  
1420 be recognized as curios or relics, firearms must fall within one of the following categories:

1421 1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or  
1422 conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is  
1423 not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

1424 2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits  
1425 firearms to be curios or relics of museum interest; and

1426 3. Any other firearms that derive a substantial part of their monetary value from the fact that they  
1427 are novel, rare, bizarre, or because of their association with some historical figure, period, or event.  
1428 Proof of qualification of a particular firearm under this category may be established by evidence of  
1429 present value and evidence that like firearms are not available except as collectors' items, or that the  
1430 value of like firearms available in ordinary commercial channels is substantially less.

1431 "Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

1432 "Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be  
1433 converted to expel single or multiple projectiles by action of an explosion of a combustible material.

1434 "Handgun" means any pistol or revolver or other firearm originally designed, made and intended to  
1435 fire single or multiple projectiles by means of an explosion of a combustible material from one or more  
1436 barrels when held in one hand.

1437 "Lawfully admitted for permanent residence" means the status of having been lawfully accorded the  
1438 privilege of residing permanently in the United States as an immigrant in accordance with the  
1439 immigration laws, such status not having changed.

1440 G. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity,  
1441 confidentiality, and security of all records and data provided by the Department of State Police pursuant  
1442 to this section.

1443 H. The provisions of this section shall not apply to (i) transactions between persons who are licensed  
1444 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)  
1445 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth  
1446 or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of  
1447 Chapter 8 of Title 23.1; or (iii) antique firearms or curios or relics.

1448 I. The provisions of this section shall not apply to restrict purchase, trade, or transfer of firearms by  
1449 a resident of Virginia when the resident of Virginia makes such purchase, trade, or transfer in another  
1450 state, in which case the laws and regulations of that state and the United States governing the purchase,  
1451 trade, or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS)  
1452 check shall be performed prior to such purchase, trade, or transfer of firearms.

1453 J. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal  
1454 history record information check is required pursuant to this section, except that a fee of \$5 shall be  
1455 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the  
1456 Department of State Police by the last day of the month following the sale for deposit in a special fund  
1457 for use by the State Police to offset the cost of conducting criminal history record information checks  
1458 under the provisions of this section.

1459 K. Any person willfully and intentionally making a materially false statement on the consent form  
1460 required in subsection B or C or on such firearm transaction records as may be required by federal law  
1461 shall be guilty of a Class 5 felony.

1462 L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents,  
1463 trades, or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

1464 L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or  
1465 otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and  
1466 intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not  
1467 apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the  
1468 performance of his official duties, or other person under his direct supervision.

1469 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such  
1470 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise  
1471 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the  
1472 Commonwealth to be resold or otherwise provided to another person who the transferor knows is  
1473 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to  
1474 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection

involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child, grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs, or assists any person in violating subsection M shall be guilty of a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

O. Any mandatory minimum sentence imposed under this section shall be served consecutively with any other sentence.

P. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating whether the driver's license is an original, duplicate, or renewed driver's license.

Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his inventory to any other person, a dealer may require such other person to consent to have the dealer obtain criminal history record information to determine if such other person is prohibited from possessing or transporting a firearm by state or federal law. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police, and the processes established for making such determinations shall conform to the provisions of this section.

R. Q. Except as provided in subdivisions 1 and 2, it shall be unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period. For the purposes of this subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange or replacement within the 30-day period immediately preceding the date of exchange or replacement. A violation of this subsection is punishable as a Class 1 misdemeanor.

1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an enhanced background check, as described in this subsection, by special application to the Department of State Police listing the number and type of handguns to be purchased and transferred for lawful business or personal use, in a collector series, for collections, as a bulk purchase from estate sales, and for similar purposes. Such applications shall be signed under oath by the applicant on forms provided by the Department of State Police, shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales report required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above the limit.

Upon being satisfied that these requirements have been met, the Department of State Police shall immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B 3.

2. The provisions of this subsection shall not apply to:

- a. A law-enforcement agency;
- b. An agency duly authorized to perform law-enforcement duties;
- c. A state or local correctional facility;
- d. A private security company licensed to do business within the Commonwealth;
- e. The purchase of antique firearms;
- f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, a description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date

the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police;

g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day;

h. A person who holds a valid Virginia permit to carry a concealed handgun;

i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection of curios or relics or who sells all or part of such collection of curios and relics; or

j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth.

**§ 18.2-308.4. Possession of firearms while in possession of certain substances.**

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.

B. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of two years. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) or more than one pound of marijuana. A violation of this subsection is a Class 6 felony, and constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of five years. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

**§ 18.2-374.1. Production, publication, sale, financing, etc., of child pornography; presumption as to age.**

A. For purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, "child pornography" means sexually explicit visual material which utilizes or has as a subject an identifiable minor. An identifiable minor is a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and shall not be construed to require proof of the actual identity of the identifiable minor.

For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, digital image, including such material stored in a computer's temporary Internet cache when three or more images or streaming videos are present, or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

B. A person shall be guilty of production of child pornography who:

1. Accosts, entices or solicits a person less than 18 years of age with intent to induce or force such person to perform in or be a subject of child pornography; or

2. Produces or makes or attempts or prepares to produce or make child pornography; or

3. Who knowingly takes part in or participates in the filming, photographing, or other production of child pornography by any means; or

4. Knowingly finances or attempts or prepares to finance child pornography.

5. [Repealed.]

B1. [Repealed.]

C1. Any person who violates this section, when the subject of the child pornography is a child less than 15 years of age, shall be punished by not less than five years nor more than 30 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography the person shall be punished by a term of imprisonment of not less than five years nor more than 30 years in a state correctional facility; ~~five years of which shall be a mandatory minimum term of imprisonment.~~ Any person who commits a second or subsequent violation of this section where the person is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 15 years nor more than 40 years; ~~15 years of which shall be a mandatory minimum term of imprisonment.~~

C2. Any person who violates this section, when the subject of the child pornography is a person at least 15 but less than 18 years of age, shall be punished by not less than one year nor more than 20 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography the person shall be punished by term of imprisonment of not less than three years nor more than 30 years in a state correctional facility; ~~three years of which shall be a mandatory minimum term of imprisonment.~~ Any person who commits a second or subsequent violation of this section when he is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 10 years nor more than 30 years; ~~10 years of which shall be a mandatory minimum term of imprisonment.~~

C3. ~~The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.~~

D. For the purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

E. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs, where the alleged offender resides, or where any sexually explicit visual material associated with a violation of this section is produced, reproduced, found, stored, or possessed.

**§ 18.2-374.1:1. Possession, reproduction, distribution, solicitation, and facilitation of child pornography; penalty.**

A. Any person who knowingly possesses child pornography is guilty of a Class 6 felony.

B. Any person who commits a second or subsequent violation of subsection A is guilty of a Class 5 felony.

C. Any person who knowingly (i) reproduces by any means, including by computer, sells, gives away, distributes, electronically transmits, displays, purchases, or possesses with intent to sell, give away, distribute, transmit, or display child pornography or (ii) commands, entreats, or otherwise attempts to persuade another person to send, submit, transfer, or provide to him any child pornography in order to gain entry into a group, association, or assembly of persons engaged in trading or sharing child pornography shall be punished by not less than five years nor more than 20 years in a state correctional facility. ~~Any person who commits a second or subsequent violation under this subsection shall be punished by a term of imprisonment of not less than five years nor more than 20 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.~~

D. Any person who intentionally operates an Internet website for the purpose of facilitating the payment for access to child pornography is guilty of a Class 4 felony.

E. All child pornography shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

F. For purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

G. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs, where the alleged offender resides, or where any child pornography is produced, reproduced, found, stored, received, or possessed in violation of this section.

H. The provisions of this section shall not apply to any such material that is possessed for a bona fide medical, scientific, governmental, law-enforcement, or judicial purpose by a physician, psychologist, scientist, attorney, employee of the Department of Social Services or a local department of social services, employee of a law-enforcement agency, judge, or clerk and such person possesses such material in the course of conducting his professional duties as such.

**§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.**

A. As used in subsections C, D, and E, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any

common carrier or communication common carrier, any electronic communications system, the Internet, or any telecommunications, wire, computer network, or radio communications system.

B. It is unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or 18.2-374.1. A violation of this subsection is a Class 6 felony.

C. It is unlawful for any person 18 years of age or older to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any person he knows or has reason to believe is a child younger than 15 years of age to knowingly and intentionally:

1. Expose his sexual or genital parts to any child to whom he is not legally married or propose that any such child expose his sexual or genital parts to such person;

2. Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child;

3. Propose to such child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act constituting an offense under § 18.2-361; or

4. Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any purposes set forth in the preceding subdivisions.

Any person who violates this subsection is guilty of a Class 5 felony. However, if the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age, the person shall be punished by a term of imprisonment of not less than five years nor more than 30 years in a state correctional facility; ~~five years of which shall be mandatory minimum term of imprisonment.~~ Any person who commits a second or subsequent violation of this subsection when the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age shall be punished by a term of imprisonment of not less than 10 years nor more than 40 years; ~~10 years of which shall be a mandatory minimum term of imprisonment.~~

D. Any person who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any child he knows or has reason to believe is at least 15 years of age but younger than 18 years of age to knowingly and intentionally commit any of the activities listed in subsection C if the person is at least seven years older than the child is guilty of a Class 5 felony. Any person who commits a second or subsequent violation of this subsection shall be punished by a term of imprisonment of not less than one nor more than 20 years; ~~one year of which shall be a mandatory minimum term of imprisonment.~~

E. Any person 18 years of age or older who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child younger than 18 years of age for (i) any activity in violation of § 18.2-355 or 18.2-361, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1 is guilty of a Class 5 felony.

**§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies.**

A. Any person convicted of two or more separate acts of violence when such offenses were not part of a common act, transaction, or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction, shall, upon conviction of a third or subsequent act of violence, be sentenced to life imprisonment ~~and shall not have all or any portion of the sentence suspended~~, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

a. First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.);

b. Mob-related felonies under Article 2 (§ 18.2-38 et seq.);

c. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.);

d. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.);

e. Robbery under § 18.2-58 and carjacking under § 18.2-58.1;

f. Except as otherwise provided in § 18.2-67.5:2 or § 18.2-67.5:3, criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.); or

g. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79.

(ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this section.

B. Prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed under "act of violence" if such offense would be a

felony if committed in the Commonwealth.

The Commonwealth shall notify the defendant in writing, at least ~~thirty~~ 30 days prior to trial, of its intention to seek punishment pursuant to this section.

C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole and shall not be eligible for any good conduct allowance or any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section, other than a person who was sentenced under subsection A of § 18.2-67.5:3 for criminal sexual assault convictions specified in subdivision f, (i) who has reached the age of ~~sixty-five~~ 65 or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of ~~sixty~~ 60 or older and who has served at least ~~ten~~ 10 years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this subsection.

**§ 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense; prior conviction.**

A. Except as otherwise provided herein, any person violating any provision of subsection A of § 46.2-341.24 is guilty of a Class 1 misdemeanor with a mandatory minimum fine of \$250. If the person's blood alcohol level as indicated by the chemical test as provided in this article or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and accuracy of the results (i) was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of five days or (ii) was more than 0.20, he shall be confined in jail for an additional mandatory minimum period of 10 days.

B. 1. Any person convicted of a second offense committed within less than five years after a prior offense under subsection A of § 46.2-341.24 shall upon conviction of the second offense be punished by a mandatory minimum fine of \$500 and by confinement in jail for not less than one month nor more than one year. Twenty days of such confinement shall be a mandatory minimum sentence.

2. Any person convicted of a second offense committed within a period of five to 10 years of a prior offense under subsection A of § 46.2-341.24 shall upon conviction of the second offense be punished by a mandatory minimum fine of \$500 and by confinement in jail for not less than one month. Ten days of such confinement shall be a mandatory minimum sentence.

3. Upon conviction of a second offense within 10 years of a prior offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of 10 days or (ii) was more than 0.20, he shall be confined for an additional mandatory minimum period of 20 days. In addition, such person shall be fined a mandatory minimum fine of \$500.

C. 1. Any person convicted of three offenses under subsection A of § 46.2-341.24 within a 10-year period is upon conviction of the third offense guilty of a Class 6 felony. The sentence of any person convicted of three offenses under subsection A of ~~§ 46.2-341.24~~ shall include a mandatory minimum sentence of 90 days, unless the three offenses were committed within a five-year period, in which case the sentence shall include a mandatory minimum sentence of confinement for six months. In addition, such person shall be fined a mandatory minimum fine of \$1,000.

2. Any person who has been convicted of a violation of § 18.2-36.1, 18.2-36.2, 18.2-51.4, or 18.2-51.5 or a felony violation under subsection A of § 46.2-341.24 is upon conviction of a subsequent violation under subsection A of § 46.2-341.24 guilty of a Class 6 felony. The punishment of any person convicted of such a subsequent violation under subsection A of § 46.2-341.24 shall include a mandatory minimum term of imprisonment of one year and a mandatory minimum fine of \$1,000.

3. The punishment of any person convicted of a fourth or subsequent offense under subsection A of § 46.2-341.24 committed within a 10-year period shall, upon conviction, include a mandatory minimum term of imprisonment of one year. In addition, such person shall be fined a mandatory minimum fine of \$1,000.

D. In addition to the penalty otherwise authorized by this section, any person convicted of a violation of subsection A of § 46.2-341.24 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1,000 and (ii) sentenced to a mandatory minimum period of confinement of five days.

E. For the purpose of determining the number of offenses committed by, and the punishment appropriate for, a person under this section, a conviction of any person or finding of not innocent in the case of a juvenile under the following shall be considered a conviction under subsection A of § 46.2-341.24: (i) § 18.2-36.1, 18.2-51.4, or 18.2-266, former § 18.1-54 (formerly § 18-75), or subsection A of § 46.2-341.24; (ii) the ordinance of any county, city, or town in the Commonwealth substantially

similar to the provisions of any offense listed in clause (i); or (iii) the laws of any other state or of the United States substantially similar to the provisions of any offense listed in clause (i).

F. Mandatory minimum punishments imposed pursuant to this section shall be cumulative, and mandatory minimum terms of confinement shall be served consecutively. However, in no case shall punishment imposed hereunder exceed the applicable statutory maximum Class 1 misdemeanor term of confinement or fine upon conviction of a first or second offense, or Class 6 felony term of confinement or fine upon conviction of a third or subsequent offense.

**§ 46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.**

A. It shall be unlawful for any person determined or adjudicated an habitual offender to drive any motor vehicle or self-propelled machinery or equipment on the highways of the Commonwealth while the revocation of the person's driving privilege remains in effect. However, the revocation determination shall not prohibit the person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

B. Except as provided in subsection D, any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle or self-propelled machinery or equipment in the Commonwealth while the revocation determination is in effect, shall be punished as follows:

1. If such driving does not of itself endanger the life, limb, or property of another, such person shall be guilty of a Class 1 misdemeanor punishable by a mandatory minimum term of confinement in jail of 10 days except in cases wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended.

2. If such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, or § 46.2-341.24, irrespective of whether the driving of itself endangers the life, limb, or property of another and the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, or § 46.2-341.24, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years, one year of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12 months. However, in cases wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended. For the purposes of this section, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of law herein shall be considered an offense in violation of such provision of law.

3. If the offense of driving while a determination as an habitual offender is in effect is a second or subsequent such offense, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

C. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle or self-propelled machinery or equipment while his license, permit, or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person has been determined an habitual offender and, by reason of this determination, is barred from driving a motor vehicle or self-propelled machinery or equipment on the highways in the Commonwealth. If the court determines the accused has been determined to be an habitual offender and finds there is probable cause that the alleged offense under this section is a felony, it shall certify the case to the circuit court of its jurisdiction for trial.

D. Notwithstanding the provisions of subdivisions 2 and 3 of subsection B, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the community corrections alternative program pursuant to § 19.2-316.4.

**§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception; petition for restoration of privilege.**

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of drugs or intoxicants), if the subsequent violation occurred within 10 years of the prior violation, or (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within 10 years of the prior offense. However, if the Commissioner has received a copy of a court order

authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. For the purposes of this subsection, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of Virginia law herein shall be considered an offense in violation of such provision of Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so unless the requirement for completion of the program has been waived by the court for good cause shown. A conviction includes a finding of not innocent in the case of a juvenile.

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1 or 18.2-51.4 or a felony violation of § 18.2-266 or (ii) convicted of three offenses arising out of separate incidents or occurrences within a period of 10 years in violation of the provisions of subsection A of § 46.2-341.24 or 18.2-266, or a substantially similar ordinance or law of any other jurisdiction, or any combination of three such offenses. A conviction includes a finding of not innocent in the case of a juvenile.

C. Any person who has had his driver's license revoked in accordance with subsection B of this section may petition the circuit court of his residence, or, if a nonresident of Virginia, any circuit court:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of his last conviction. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a period of at least six months, and upon whatever other conditions the court may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court, and the court shall give the recommendations such weight as the court deems appropriate. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

2. For a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment after the expiration of three years from the date of his last conviction. The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court shall prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court, and the court shall give the recommendations such weight as the court deems appropriate. The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

The ignition interlock system installation requirement under subdivisions 1 and 2 of this subsection

1905 need only be satisfied once as to any single revocation under subsection B of this section for any person  
1906 seeking restoration under subdivision 1 following the granting of a restricted license under subdivision 1  
1907 or 2.

1908 D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i)  
1909 while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted  
1910 license issued pursuant to subsection C shall, provided such revocation was based on at least one  
1911 conviction for an offense committed after July 1, 1999, be punished as follows:

1912 1. If such driving does not of itself endanger the life, limb, or property of another, such person shall  
1913 be guilty of a Class 1 misdemeanor ~~punishable by a mandatory minimum term of confinement in jail of~~  
1914 ~~10 days except in cases wherein such operation is necessitated in situations of apparent extreme~~  
1915 ~~emergency that require such operation to save life or limb, the sentence, or any part thereof, may be~~  
1916 ~~suspended.~~

1917 2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place  
1918 while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or  
1919 a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of  
1920 itself endangers the life, limb, or property of another and the person has been previously convicted of a  
1921 violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar  
1922 local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by  
1923 confinement in a state correctional facility for not less than one year nor more than five years, ~~one year~~  
1924 ~~of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the~~  
1925 ~~court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12~~  
1926 ~~months and no portion of such sentence shall be suspended or run concurrently with any other sentence.~~

1927 b. However, in cases wherein such operation is necessitated in situations of apparent extreme  
1928 emergency that require such operation to save life or limb, the sentence, or any part thereof, may be  
1929 suspended.

1930 3. If any such offense of driving is a second or subsequent violation, such person shall be punished  
1931 as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers  
1932 the life, limb, or property of another.

1933 E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and  
1934 prior to imposition of sentence with the consent of the defendant, the court may order the defendant to  
1935 be evaluated for and to participate in the community corrections alternative program pursuant to  
1936 § 19.2-316.4.

1937 F. Any period of driver's license revocation imposed pursuant to this section shall not begin to expire  
1938 until the person convicted has surrendered his license to the court or to the Department of Motor  
1939 Vehicles.

1940 G. Nothing in this section shall prohibit a person from operating any farm tractor on the highways  
1941 when it is necessary to move the tractor from one tract of land used for agricultural purposes to another  
1942 such tract of land when the distance between the tracts is no more than five miles.

1943 H. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while  
1944 his license is revoked pursuant to subsection A or B, or (ii) in violation of the terms of a restricted  
1945 license issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be  
1946 guilty of a violation of § 18.2-272.

1947 **§ 46.2-865.1. Injuring another or causing the death of another while engaging in a race;**  
1948 **penalties.**

1949 A. Any person who, while engaging in a race in violation of § 46.2-865 in a manner so gross,  
1950 wanton, and culpable as to show a reckless disregard for human life:

1951 1. Causes serious bodily injury to another person who is not involved in the violation of § 46.2-865  
1952 is guilty of a Class 6 felony; or

1953 2. Causes the death of another person is guilty of a felony punishable by a term of imprisonment of  
1954 not less than one nor more than 20 years; ~~one year of which shall be a mandatory minimum term of~~  
1955 ~~imprisonment.~~

1956 B. Upon conviction, the court shall suspend the driver's license of such person for a period of not  
1957 less than one year nor more than three years, and shall order the surrender of the license to be disposed  
1958 of in accordance with the provisions of § 46.2-398.

1959 **§ 53.1-203. Felonies by prisoners; penalties.**

1960 It shall be unlawful for a prisoner in a state, local or community correctional facility or in the  
1961 custody of an employee thereof to:

1962 1. Escape from a correctional facility or from any person in charge of such prisoner;

1963 2. Willfully break, cut or damage any building, furniture, fixture or fastening of such facility or any  
1964 part thereof for the purpose of escaping, aiding any other prisoner to escape therefrom or rendering such  
1965 facility less secure as a place of confinement;

1966 3. Make, procure, secrete or have in his possession any instrument, tool or other thing for the

purpose of escaping from or aiding another to escape from a correctional facility or employee thereof;

4. Make, procure, secrete or have in his possession a knife, instrument, tool or other thing not authorized by the superintendent or sheriff which is capable of causing death or bodily injury;

5. Procure, sell, secrete or have in his possession any chemical compound which he has not lawfully received;

6. Procure, sell, secrete or have in his possession a controlled substance classified in Schedule III of the Drug Control Act (§ 54.1-3400 et seq.) or marijuana;

7. Introduce into a correctional facility or have in his possession firearms or ammunition for firearms;

8. Willfully burn or destroy by use of any explosive device or substance, in whole or in part, or cause to be so burned or destroyed, any personal property, within any correctional facility;

9. Willfully tamper with, damage, destroy, or disable any fire protection or fire suppression system, equipment, or sprinklers within any correctional facility; or

10. Conspire with another prisoner or other prisoners to commit any of the foregoing acts.

For violation of any of the provisions of this section, except subdivision 6, the prisoner shall be guilty of a Class 6 felony. For a violation of subdivision 6, he shall be guilty of a Class 5 felony. If the violation is of subdivision 1 of this section and the escapee is a felon, he shall be sentenced to a mandatory minimum term of confinement of one year, which shall be served consecutively with any other sentence. The prisoner shall, upon conviction of escape, immediately commence to serve such escape sentence, and he shall not be eligible for parole during such period. Any prisoner sentenced to life imprisonment who escapes shall not be eligible for parole. No part of the time served for escape shall be credited for the purpose of parole toward the sentence or sentences, the service of which is interrupted for service of the escape sentence, nor shall it be credited for such purpose toward any other sentence.

2. That the Secretary of Public Safety and Homeland Security shall establish a work group composed of the Director of the Department of Corrections or his designee, the Executive Secretary of the Supreme Court or his designee, the Director of the Virginia Sentencing Commission or his designee, the Executive Director of the Virginia Indigent Defense Commission or his designee, the President of the Virginia Association of Commonwealth's Attorneys or his designee, and such other stakeholders as the Secretary of Public Safety and Homeland Security shall deem appropriate to evaluate the feasibility of resentencing persons previously convicted of a felony offense that was punishable by a mandatory minimum term of confinement. The work group shall provide recommendations related to potential procedures for conducting such resentencing hearings and collect data concerning the number of persons who may be eligible for a resentencing hearing, the offenses such persons were convicted of, the sentences that such persons received, and the number of years such persons have served for the offense for which there was a mandatory minimum term of confinement. The work group shall report its findings and recommendations to the Governor and the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by November 1, 2021.

ENGROSSED

SB1443ES1