

22106532D

SENATE BILL NO. 104
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Senator Morrissey
 on February 14, 2022)

(Patron Prior to Substitute—Senator Morrissey)

A BILL to amend and reenact §§ 3.2-4212, 4.1-302, 18.2-186.4, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, 18.2-308.4, 46.2-391, 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, 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, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, 18.2-308.4, 46.2-391, 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.

§ 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 2 a through 2 c;
3. 250 grams or more of a mixture or substance described in subdivisions 2 a through 2 d that contain cocaine base; or
4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

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

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

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

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

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

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

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

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

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

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

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

191 4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

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

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

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

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

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

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

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

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

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

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

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

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

234 H2. Any person who was the principal or one of several principal administrators, organizers, or
235 leaders of a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross
236 receipts during any 12-month period of its existence from the manufacture, importation, or distribution
237 of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of
238 isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give,
239 distribute, or possess with the intent to manufacture, sell, give, or distribute the following during any
240 12-month period of its existence:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it is unlawful for any person to

sell, give, distribute, or possess with intent to sell, give, or distribute marijuana.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

described in subdivision 1;

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

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

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

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

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

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

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

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

E. The exemptions set out in §§ 18.2-308 and 18.2-308.016 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities; (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose; (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any

organization authorized by the school to conduct its programs either on or off the school premises; (iv) any law-enforcement officer, or retired law-enforcement officer qualified pursuant to subsection C of § 18.2-308.016; (v) any person who possesses a knife or blade which he uses customarily in his trade; (vi) a person who possesses an unloaded firearm or a stun weapon that is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle; (vii) a person who has a valid concealed handgun permit and possesses a concealed handgun or a stun weapon while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to the school; (viii) a school security officer authorized to carry a firearm pursuant to § 22.1-280.2:1; or (ix) an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, hired by a child day center or a private or religious school for the protection of students and employees as authorized by such school. For the purposes of this subsection, "weapon" includes a knife having a metal blade of three inches or longer and "closed container" includes a locked vehicle trunk.

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

G. As used in this section:

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

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

§ 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition for restoration order; when issued.

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

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm, ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) 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. 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 a misdemeanor offense listed in § 18.2-308.1:8 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 if committed by an adult would be a felony or a misdemeanor listed in § 18.2-308.1:8; (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

552 on the consent form specified in subsection A, and provided the Department of State Police with the
553 name, birth date, gender, race, citizenship, and social security and/or any other identification number and
554 the number of firearms by category intended to be sold, rented, traded, or transferred and (ii) requested
555 criminal history record information by a telephone call to or other communication authorized by the
556 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish
557 personal identification and residence in Virginia for purposes of this section, a dealer must require any
558 prospective purchaser to present one photo-identification form issued by a governmental agency of the
559 Commonwealth or by the United States Department of Defense that demonstrates that the prospective
560 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm
561 purchase, residency of a member of the armed forces shall include both the state in which the member's
562 permanent duty post is located and any nearby state in which the member resides and from which he
563 commutes to the permanent duty post. A member of the armed forces whose photo identification issued
564 by the Department of Defense does not have a Virginia address may establish his Virginia residency
565 with such photo identification and either permanent orders assigning the purchaser to a duty post,
566 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo
567 identification presented to a dealer by the prospective purchaser is a driver's license or other photo
568 identification issued by the Department of Motor Vehicles, and such identification form contains a date
569 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by
570 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until
571 30 days after the date of issue of an original or duplicate driver's license unless the prospective
572 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing
573 that the original date of issue of the driver's license was more than 30 days prior to the attempted
574 purchase.

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

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

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

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

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

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

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

609 C. No dealer shall sell, rent, trade, or transfer from his inventory any firearm, except when the
610 transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of
611 subdivision B 5, to any person who is a dual resident of Virginia and another state pursuant to
612 applicable federal law unless he has first obtained from the Department of State Police a report
613 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~~ is 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. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

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

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

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

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the

675 immigration laws, such status not having changed.

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

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

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

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

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

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

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

705 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
706 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
707 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
708 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
709 ineligible to purchase or otherwise receive a firearm, shall be is guilty of a Class 4 felony and sentenced
710 to a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
711 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
712 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
713 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to
714 § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
715 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

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

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

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

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

798 from, and shall be made to run consecutively with, any punishment received for the commission of the
799 primary felony.

800 C. It shall be is unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle,
801 or other firearm or display such weapon in a threatening manner while committing or attempting to
802 commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell,
803 or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act
804 (§ 54.1-3400 et seq.) or more than one pound of marijuana. A violation of this subsection is a Class 6
805 felony; and constitutes a separate and distinct felony and any person convicted hereunder shall be
806 sentenced to a mandatory minimum term of imprisonment of five years. Such punishment shall be
807 separate and apart from, and shall be made to run consecutively with, any punishment received for the
808 commission of the primary felony.

809 **§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception;**
810 **petition for restoration of privilege.**

811 A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's
812 license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a
813 second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial
814 motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of
815 drugs or intoxicants), if the subsequent violation occurred within 10 years of the prior violation, or (ii)
816 is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been
817 forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within 10
818 years of the prior offense. However, if the Commissioner has received a copy of a court order
819 authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed
820 as provided in the order of the court. For the purposes of this subsection, an offense in violation of a
821 valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to
822 any provision of Virginia law herein shall be considered an offense in violation of such provision of
823 Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any
824 person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law
825 of another jurisdiction, until receipt of notification that such person has successfully completed an
826 alcohol safety action program if such person was required by court order to do so unless the requirement
827 for completion of the program has been waived by the court for good cause shown. A conviction
828 includes a finding of not innocent in the case of a juvenile.

829 B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any
830 person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1
831 or 18.2-51.4 or a felony violation of § 18.2-266 or (ii) convicted of three offenses arising out of separate
832 incidents or occurrences within a period of 10 years in violation of the provisions of subsection A of
833 § 46.2-341.24 or 18.2-266, or a substantially similar ordinance or law of any other jurisdiction, or any
834 combination of three such offenses. A conviction includes a finding of not innocent in the case of a
835 juvenile.

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

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

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

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

1. If such driving does not of itself endanger the life, limb, or property of another, such person shall be is 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. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place 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 a substantially similar law or ordinance of another jurisdiction, 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, subsection A of § 46.2-341.24, or a substantially similar local ordinance, or law of another jurisdiction, such person shall be is 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 and no portion of such sentence shall be suspended or run concurrently with any other sentence.

b. 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.

3. If any such offense of driving is a second or subsequent violation, 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.

E. Notwithstanding the provisions of subdivisions D 2 and 3 of subsection D, 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.

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

G. Nothing in this section shall prohibit a 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 such tract of land when the distance between the tracts is no more than five miles.

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

921 guilty of a violation of § 18.2-272.

922 **§ 53.1-203. Felonies by prisoners; penalties.**

923 It ~~shall be~~ *is* unlawful for a prisoner in a state, local or community correctional facility or in the
924 custody of an employee thereof to:

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

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

929 3. Make, procure, secrete or have in his possession any instrument, tool or other thing for the
930 purpose of escaping from or aiding another to escape from a correctional facility or employee thereof;

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

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

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

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

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

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

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

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

954 **2. That nothing in this act shall create any cause of action for damages against the Commonwealth**
955 **or any of its political subdivisions, nor shall it form the basis for relief in any habeas corpus**
956 **proceeding or appellate proceeding.**