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HOUSE BILL NO. 179

Offered January 10, 2024

Prefiled January 3, 2024

A BILL to amend and reenact §§ 16.1-253.2, 18.2-46.3:3, 18.2-53.1, 18.2-60.4, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-154, 18.2-248 through 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, 18.2-308.4, 18.2-374.1, 18.2-374.1:1, and 53.1-203 of the Code of Virginia, relating to consecutive terms of imprisonment.

Patrons—Gardner, Callsen, Clark, Martinez, Reaser, Seibold and Shin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.2, 18.2-46.3:3, 18.2-53.1, 18.2-60.4, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-154, 18.2-248 through 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255.2, 18.2-270, 18.2-308.1, 18.2-308.2, 18.2-308.2:2, 18.2-308.4, 18.2-374.1, 18.2-374.1:1, and 53.1-203 of the Code of Virginia are amended and reenacted as follows:

§ 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 § 16.1-253.1, 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 second offense of violating a protective order, 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, 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 § 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103 is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order 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 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. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date of conviction.

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.

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

Any person who violates § 18.2-46.2 (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 felony punishable as specified in § 18.2-46.2, and shall be sentenced to a mandatory minimum term of imprisonment of two years ~~to be served consecutively with any other sentence.~~ A

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59 person who violates subsection A of § 18.2-46.3 upon any property listed in this section is guilty of a
60 Class 5 felony, except that any person 18 years of age or older who violates subsection A of § 18.2-46.3
61 upon any property listed in this section, when such offense is committed against a juvenile, is guilty of
62 a Class 4 felony. Any person who violates subsection B of § 18.2-46.3 upon any property listed in this
63 section is guilty of a Class 4 felony. It is a violation of this section if the person violated § 18.2-46.2 or
64 18.2-46.3 on the property described in clauses (i) through (iii) regardless of where the person intended
65 to commit such violation.

66 **§ 18.2-53.1. Use or display of firearm in committing felony.**

67 It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm
68 or display such weapon in a threatening manner while committing or attempting to commit murder,
69 rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2,
70 robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a
71 law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in
72 § 18.2-51.2, malicious wounding by mob as defined in § 18.2-41 or abduction. Violation of this section
73 shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a
74 mandatory minimum term of imprisonment of three years for a first conviction, and to a mandatory
75 minimum term of five years for a second or subsequent conviction under the provisions of this section.
76 Such punishment shall be separate and apart from; ~~and shall be made to run consecutively with;~~ any
77 punishment received for the commission of the primary felony.

78 **§ 18.2-60.4. Violation of protective orders; penalty.**

79 A. Any person who violates any provision of a protective order issued pursuant to § 19.2-152.8,
80 19.2-152.9, or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding
81 of contempt for the same act. The punishment for any person convicted of a second offense of violating
82 a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, when
83 the offense is committed within five years of the prior conviction and when either the instant or prior
84 offense was based on an act or threat of violence, shall include a mandatory minimum term of
85 confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective
86 order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, when the offense
87 is committed within 20 years of the first conviction and when either the instant or one of the prior
88 offenses was based on an act or threat of violence, is guilty of a Class 6 felony and the punishment
89 shall include a mandatory minimum term of confinement of six months. ~~The mandatory minimum terms~~
90 ~~of confinement prescribed for violations of this section shall be served consecutively with any other~~
91 ~~sentence.~~

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

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

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

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

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

110 **§ 18.2-61. Rape.**

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

117 B. A violation of this section shall be punishable, in the discretion of the court or jury, by
118 confinement in a state correctional facility for life or for any term not less than five years; and in
119 addition:

120 1. For a violation of clause (iii) of subsection A 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 clause (iii) of subsection A 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 clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall 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.

There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. 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.

§ 18.2-67.1. Forcible sodomy.

A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal 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 such acts with any other person, 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. Forcible sodomy is a felony punishable by confinement in a 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 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

182 action will promote maintenance of the family unit and will be in the best interest of the complaining
183 witness.

184 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case
185 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the
186 defendant who has not previously had a proceeding against him for violation of this section dismissed
187 pursuant to this subsection and with the consent of the complaining witness and the attorney for the
188 Commonwealth, may defer further proceedings and place the defendant on probation pending completion
189 of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the
190 defendant fails to so complete such counseling or therapy, the court may make final disposition of the
191 case and proceed as otherwise provided. If such counseling is completed as prescribed under
192 § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after
193 consideration of the views of the complaining witness and such other evidence as may be relevant, the
194 court finds such action will promote maintenance of the family unit and be in the best interest of the
195 complaining witness.

196 **§ 18.2-67.2. Object sexual penetration; penalty.**

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

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

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

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

208 1. For a violation of subdivision A 1, where the offender is more than three years older than the
209 victim, if done in the commission of, or as part of the same course of conduct as, or as part of a
210 common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89,
211 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of
212 confinement of 25 years; or

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

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

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

228 C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case
229 tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the
230 defendant who has not previously had a proceeding against him for violation of this section dismissed
231 pursuant to this subsection and with the consent of the complaining witness and the attorney for the
232 Commonwealth, may defer further proceedings and place the defendant on probation pending completion
233 of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the
234 defendant fails to so complete such counseling or therapy, the court may make final disposition of the
235 case and proceed as otherwise provided. If such counseling is completed as prescribed under
236 § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after
237 consideration of the views of the complaining witness and such other evidence as may be relevant, the
238 court finds such action will promote maintenance of the family unit and be in the best interest of the
239 complaining witness.

240 **§ 18.2-154. Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty.**

241 Any person who maliciously shoots at, or maliciously throws any missile at or against, any train or
242 cars on any railroad or other transportation company or any vessel or other watercraft, or any motor
243 vehicle or other vehicles when occupied by one or more persons, whereby the life of any person on

such train, car, vessel, or other watercraft, or in such motor vehicle or other vehicle, may be put in peril, is guilty of a Class 4 felony. In the event of the death of any such person, resulting from such malicious shooting or throwing, the person so offending is guilty of murder in the second degree. However, if the homicide is willful, deliberate, and premeditated, he is guilty of murder in the first degree.

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

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

§ 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.

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

307 a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;

308 b. The person did not use violence or credible threats of violence or possess a firearm or other
309 dangerous weapon in connection with the offense or induce another participant in the offense to do so;

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

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

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

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

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

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

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

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

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

365 E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute
366 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;

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

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

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

435 H2. Any person who was the principal or one of several principal administrators, organizers or
436 leaders of a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross
437 receipts during any 12-month period of its existence from the manufacture, importation, or distribution
438 of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of
439 isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give,
440 distribute or possess with the intent to manufacture, sell, give or distribute the following during any
441 12-month period of its existence:

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

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

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

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

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

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

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

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

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

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

468 J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any
469 two or more different substances listed below with the intent to manufacture methamphetamine,
470 methcathinone, or amphetamine is guilty of a Class 6 felony: liquefied ammonia gas, ammonium nitrate,
471 ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture
472 of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium,
473 sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium
474 permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or
475 2-propanone.

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

479 **§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.**

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

§ 18.2-248.02. Allowing a minor or incapacitated person to be present during manufacture or attempted manufacture of methamphetamine prohibited; penalties.

Any person 18 years of age or older who knowingly allows (i) a minor under the age of 15, (ii) a minor 15 years of age or older with whom he maintains a custodial relationship, including but not limited to as a parent, step-parent, grandparent, step-grandparent, or who stands in loco parentis with respect to such minor, or (iii) a mentally incapacitated or physically helpless person of any age, to be present in the same dwelling, apartment as defined by § 55.1-2000, unit of a hotel as defined in § 35.1-1, garage, shed, or vehicle during the manufacture or attempted manufacture of methamphetamine as prohibited by subsection C1 of § 18.2-248 is guilty of a felony punishable by imprisonment for not less than 10 nor more than 40 years. ~~This penalty shall be in addition to and served consecutively with any other sentence.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A violation of *this* 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

551 person violating the provisions of this subsection shall, upon conviction, be incarcerated for a mandatory
552 minimum term of six months ~~to be served consecutively with any other sentence.~~

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

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

556 **§ 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties;**
557 **penalty.**

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

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

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

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

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

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

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

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

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

593 **§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.**

594 A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be
595 guilty of a Class 1 misdemeanor with a mandatory minimum fine of \$250. If the person's blood alcohol
596 level as indicated by the chemical test administered as provided in this article or by any other
597 scientifically reliable chemical test performed on whole blood under circumstances reliably establishing
598 the identity of the person who is the source of the blood and the accuracy of the results (i) was at least
599 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period
600 of five days or, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 10
601 days.

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

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

610 3. Upon conviction of a second offense within 10 years of a prior offense, if the person's blood
611 alcohol level as indicated by the chemical test administered as provided in this article or by any other
612 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 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,

797 been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health
798 treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially
799 similar law of any other jurisdiction, or been the subject of a temporary detention order pursuant to
800 § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805; and (iv) is the
801 applicant subject to an emergency substantial risk order or a substantial risk order entered pursuant to §
802 19.2-152.13 or 19.2-152.14 and prohibited from purchasing, possessing, or transporting a firearm
803 pursuant to § 18.2-308.1:6 or any substantially similar law of any other jurisdiction.

804 B. 1. No dealer shall sell, rent, trade, or transfer from his inventory any such firearm to any other
805 person who is a resident of Virginia until he has (i) obtained written consent and the other information
806 on the consent form specified in subsection A, and provided the Department of State Police with the
807 name, birth date, gender, race, citizenship, and social security and/or any other identification number and
808 the number of firearms by category intended to be sold, rented, traded, or transferred and (ii) requested
809 criminal history record information by a telephone call to or other communication authorized by the
810 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish
811 personal identification and residence in Virginia for purposes of this section, a dealer must require any
812 prospective purchaser to present one photo-identification form issued by a governmental agency of the
813 Commonwealth or by the United States Department of Defense or a special identification card without a
814 photograph issued pursuant to § 46.2-345.2 that demonstrates that the prospective purchaser resides in
815 Virginia. For the purposes of this section and establishment of residency for firearm purchase, residency
816 of a member of the armed forces shall include both the state in which the member's permanent duty post
817 is located and any nearby state in which the member resides and from which he commutes to the
818 permanent duty post. A member of the armed forces whose photo identification issued by the
819 Department of Defense does not have a Virginia address may establish his Virginia residency with such
820 photo identification and either permanent orders assigning the purchaser to a duty post, including the
821 Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the identification
822 presented to a dealer by the prospective purchaser is a driver's license or other photo identification
823 issued by the Department of Motor Vehicles or a special identification card without a photograph issued
824 pursuant to § 46.2-345.2, and such identification form or card contains a date of issue, the dealer shall
825 not, except for a renewed driver's license or other photo identification issued by the Department of
826 Motor Vehicles or a renewed special identification card without a photograph issued pursuant to
827 § 46.2-345.2, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date
828 of issue of an original or duplicate driver's license or special identification card without a photograph
829 unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles
830 driver's record showing that the original date of issue of the driver's license was more than 30 days prior
831 to the attempted purchase.

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

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

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

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

852 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
853 deliver the written consent form required by subsection A to the Department of State Police. The State
854 Police shall immediately initiate a search of all available criminal history record information to
855 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal
856 law. If the search discloses information indicating that the buyer or transferee is so prohibited from
857 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in
858 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 fifth 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

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

920 are novel, rare, bizarre, or because of their association with some historical figure, period, or event.
921 Proof of qualification of a particular firearm under this category may be established by evidence of
922 present value and evidence that like firearms are not available except as collectors' items, or that the
923 value of like firearms available in ordinary commercial channels is substantially less.

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

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

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

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

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

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

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

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

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

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

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

962 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
963 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
964 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
965 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
966 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
967 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
968 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
969 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
970 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to
971 § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
972 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

980 Q. ~~P.~~ Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his
981 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.

§ 53.1-203. Felonies by prisoners; penalties.

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

1. Escape from a correctional facility or from any person in charge of such prisoner;
2. Willfully break, cut or damage any building, furniture, fixture or fastening of such facility or any part thereof for the purpose of escaping, aiding any other prisoner to escape therefrom or rendering such facility less secure as a place of confinement;
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;

1166 8. Willfully burn or destroy by use of any explosive device or substance, in whole or in part, or
1167 cause to be so burned or destroyed, any personal property, within any correctional facility;
1168 9. Willfully tamper with, damage, destroy, or disable any fire protection or fire suppression system,
1169 equipment, or sprinklers within any correctional facility; or
1170 10. Conspire with another prisoner or other prisoners to commit any of the foregoing acts.
1171 For violation of any of the provisions of this section, except subdivision 6, the prisoner shall be
1172 guilty of a Class 6 felony. For a violation of subdivision 6, he shall be guilty of a Class 5 felony. If the
1173 violation is of subdivision 1 of this section and the escapee is a felon, he shall be sentenced to a
1174 mandatory minimum term of confinement of one year; ~~which shall be served consecutively with any~~
1175 ~~other sentence~~. The prisoner shall, upon conviction of escape, immediately commence to serve such
1176 escape sentence, and he shall not be eligible for parole during such period. Any prisoner sentenced to
1177 life imprisonment who escapes shall not be eligible for parole. No part of the time served for escape
1178 shall be credited for the purpose of parole toward the sentence or sentences, the service of which is
1179 interrupted for service of the escape sentence, nor shall it be credited for such purpose toward any other
1180 sentence.