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**HOUSE BILL NO. 633**

Offered January 10, 2024

Prefiled January 9, 2024

*A BILL to amend and reenact §§ 8.01-42.4, 17.1-805, 18.2-513, 19.2-10.2, 19.2-268.3, 19.2-299, and 19.2-392.02 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 8 of Title 18.2 an article numbered 3.1, consisting of sections numbered 18.2-361.2 and 18.2-361.3, relating to labor trafficking; forced labor or service; penalties.*

Patrons—Cherry, Delaney, Earley, McNamara and Simonds

Referred to Committee for Courts of Justice

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

**1. That §§ 8.01-42.4, 17.1-805, 18.2-513, 19.2-10.2, 19.2-268.3, 19.2-299, and 19.2-392.02 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 8 of Title 18.2 an article numbered 3.1, consisting of sections numbered 18.2-361.2 and 18.2-361.3, as follows:**

**§ 8.01-42.4. Civil action for trafficking in persons.**

A. Any person injured by reason of (i) a violation of clause (iii), (iv), or (v) of § 18.2-48; (ii) a violation of § 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-361.2, or 18.2-368; or (iii) a felony violation of § 18.2-346.01 may sue therefor and recover compensatory damages, punitive damages, and reasonable attorney fees and costs.

B. No action shall be commenced under this section more than seven years after the later of the date on which such person (i) was no longer subject to the conduct prohibited by clause (iii), (iv), or (v) of § 18.2-48 or § 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-361.2, or 18.2-368 or under a felony violation of § 18.2-346.01 or (ii) attained 18 years of age.

C. The provisions of this section shall apply whether or not an individual has been charged with or convicted of any of the alleged violations listed in subsection A.

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

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

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

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

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving, or distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has

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59 previously been convicted of a violent felony offense punishable by a maximum punishment of less than  
 60 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent  
 61 felony offense punishable by a maximum term of imprisonment of 40 years or more; and

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

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

71 C. For purposes of this chapter, violent felony offenses shall include any felony violation of  
 72 § 16.1-253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32,  
 73 18.2-32.1, 18.2-32.2, 18.2-33, or 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of  
 74 § 18.2-40 or 18.2-41; any violation of clause (c) (i) or (ii) of subsection B of § 18.2-46.3; any violation  
 75 of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation  
 76 of § 18.2-48, 18.2-48.1, or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3,  
 77 18.2-51.4, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, or 18.2-55; any  
 78 violation of subsection B of § 18.2-57; any felony violation of § 18.2-57.2; any violation of § 18.2-58  
 79 or 18.2-58.1; any felony violation of § 18.2-60.1, 18.2-60.3, or 18.2-60.4; any violation of § 18.2-61,  
 80 18.2-64.1, 18.2-67.1, 18.2-67.2, former § 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a  
 81 third conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in  
 82 violation of subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of  
 83 subsection A of § 18.2-67.4:1; any violation of subsection A of § 18.2-77; any Class 3 felony violation  
 84 of § 18.2-79; any Class 3 felony violation of § 18.2-80; any violation of § 18.2-85, 18.2-89, 18.2-90,  
 85 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-152.7; any Class 4 felony violation of  
 86 § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony violation of § 18.2-155; any  
 87 felony violation of § 18.2-162; any violation of § 18.2-279 involving an occupied dwelling; any felony  
 88 violation of subsection A or B of § 18.2-280; any violation of § 18.2-281; any felony violation of  
 89 subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation of § 18.2-286.1,  
 90 18.2-287.2, 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any felony violation of  
 91 subsection C of § 18.2-308.1 or § 18.2-308.2; any violation of § 18.2-308.2:1 or subsection M or N of  
 92 § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312; any former felony violation of § 18.2-346; any  
 93 felony violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356,  
 94 18.2-357, or 18.2-357.1; any violation of, former § 18.2-358; any violation of, subsection B of  
 95 § 18.2-361; any violation of, § 18.2-361.2, subsection B of § 18.2-366; any violation of, § 18.2-368,  
 96 18.2-370, or 18.2-370.1; any violation of, or subsection A of § 18.2-371.1; any felony violation of  
 97 § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony  
 98 violation of § 18.2-374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second or subsequent  
 99 offense under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any violation  
 100 of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; any  
 101 felony violation of § 18.2-460, 18.2-474.1, or 18.2-477.1; any violation of § 18.2-477, 18.2-478,  
 102 18.2-480, 18.2-481, or 18.2-485; any violation of § 37.2-917; any violation of § 52-48; any violation of  
 103 § 53.1-203; any conspiracy or attempt to commit any offense specified in this subsection, or any  
 104 substantially similar offense under the laws of any state, the District of Columbia, or the United States  
 105 or its territories.

#### 106 Article 3.1.

#### 107 Labor Trafficking; Forced Labor or Service.

108 § 18.2-361.2. **Labor trafficking; forced labor or service; receiving money from labor trafficking;**  
 109 **penalties.**

110 A. As used in this article, unless the context requires a different meaning:

111 "Abuse or threatened abuse of law or legal process" means the use or threatened use of a law or  
 112 legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the  
 113 law was not designed in order to exert pressure on another person to cause that person to take some  
 114 action or refrain from taking some action. "Abuse or threatened abuse of law or legal process" includes  
 115 destroying, concealing, confiscating, or withholding or threatening to withhold a passport, immigration  
 116 document, other governmental identification, or any other document or item of value or threatening to  
 117 report another as being illegally present in the United States.

118 "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial,  
 119 or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a  
 120 reasonable person of the same background and in the same circumstances to perform or to continue

performing labor or services in order to avoid incurring that harm.

B. Any person who knowingly provides or obtains the labor or services of a person by means of (i) force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (ii) serious harm or threats of serious harm to that person or another person; (iii) the abuse or threatened abuse of law or legal process; or (iv) any scheme, plan, or pattern intended to cause the person to believe that if that person did not perform such labor or services that person or another person would suffer serious harm or physical restraint is guilty of labor trafficking.

C. Any person who knowingly benefits, financially or by receiving anything of value, from participation in a venture that has engaged in the providing or obtaining of labor or services by any of the means described in subsection B, knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, is guilty of receiving money from labor trafficking.

D. A violation of this section is punishable as a Class 4 felony. However, any adult who violates this section with a person under the age of 18 is guilty of a Class 3 felony.

**§ 18.2-361.3. Venue for labor trafficking, forced labor or service, receiving money from labor trafficking.**

Any crime specified in this article may be presented, indicted, tried, and convicted in any county or city in which an element of the crime is alleged to have occurred, in any county or city through which the victim was transported by the defendant in the commission of such offense, or in any county or city where the victim resided at the time of the offense.

**§ 18.2-513. Definitions.**

As used in this chapter:

"Criminal street gang" means the same as that term is defined in § 18.2-46.1.

"Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business trust, criminal street gang, or other group of three or more individuals associated for the purpose of criminal activity.

"Proceeds" means the same as that term is defined in § 18.2-246.2.

"Racketeering activity" means to commit, attempt to commit, or conspire to commit or to solicit, coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4, § 18.2-460; a felony offense of § 3.2-4212, 3.2-4219, 10.1-1455, 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4, § 18.2-47, 18.2-48, 18.2-48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-59, 18.2-77, 18.2-79, 18.2-80, 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, 18.2-95, 18.2-96, or 18.2-103.1, Article 4 (§ 18.2-111 et seq.) of Chapter 5, Article 1 (§ 18.2-168 et seq.) of Chapter 6, § 18.2-178 or 18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6, § 18.2-246.13, Article 1 (§ 18.2-247 et seq.) of Chapter 7, § 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 18.2-308.2:1, 18.2-328, 18.2-346, 18.2-346.01, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-361.2, 18.2-368, 18.2-369, or 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9, Article 1 (§ 18.2-434 et seq.) of Chapter 10, Article 2 (§ 18.2-438 et seq.) of Chapter 10, Article 3 (§ 18.2-446 et seq.) of Chapter 10, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12, § 3.2-6571, 18.2-516, 32.1-314, 58.1-1008.2, 58.1-1017, or 58.1-1017.1; or any substantially similar offenses under the laws of any other state, the District of Columbia, or the United States or its territories.

**§ 19.2-10.2. Administrative subpoena issued for record from provider of electronic communication service or remote computing service.**

A. A provider of electronic communication service or remote computing service that is transacting or has transacted any business in the Commonwealth shall disclose a record or other information pertaining to a subscriber to or customer of such service, excluding the contents of electronic communications as required by § 19.2-70.3, to an attorney for the Commonwealth or the Attorney General pursuant to an administrative subpoena issued under this section.

1. In order to obtain such records or other information, the attorney for the Commonwealth or the Attorney General shall certify on the face of the subpoena that there is reason to believe that the records or other information being sought are relevant to a legitimate law-enforcement investigation concerning violations of §§ 18.2-47, 18.2-48, 18.2-49, 18.2-346, 18.2-346.01, 18.2-347, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-361.2, 18.2-374.1, and 18.2-374.1:1, former § 18.2-374.1:2, and § 18.2-374.3.

2. Upon written certification by the attorney for the Commonwealth or the Attorney General that there is a reason to believe that the victim is under the age of 18 and that notification or disclosure of the existence of the subpoena will endanger the life or physical safety of an individual, or lead to flight from prosecution, the destruction of or tampering with evidence, the intimidation of potential witnesses, or otherwise seriously jeopardize an investigation, the subpoena shall include a provision ordering the

182 service provider not to notify or disclose the existence of the subpoena to another person, other than an  
183 attorney to obtain legal advice, for a period of 30 days after the date on which the service provider  
184 responds to the subpoena.

185 3. On a motion made promptly by the electronic communication service or remote computing service  
186 provider, a court of competent jurisdiction may quash or modify the administrative subpoena if the  
187 records or other information requested are unusually voluminous in nature or if compliance with the  
188 subpoena would otherwise cause an undue burden on the service provider.

189 B. All records or other information received by an attorney for the Commonwealth or the Attorney  
190 General pursuant to an administrative subpoena issued under this section shall be used only for a  
191 reasonable length of time not to exceed 30 days and only for a legitimate law-enforcement purpose.  
192 Upon completion of the investigation, the records or other information held by the attorney for the  
193 Commonwealth or the Attorney General shall be destroyed if no prosecution is initiated. The existence  
194 of such a subpoena shall be disclosed upon motion of an accused.

195 C. No cause of action shall lie in any court against an electronic communication service or remote  
196 computing service provider, its officers, employees, agents, or other specified persons for providing  
197 information, facilities, or assistance in accordance with the terms of an administrative subpoena issued  
198 under this section.

199 D. Records or other information pertaining to a subscriber to or customer of such service means  
200 name, address, local and long distance telephone connection records, or records of session times and  
201 durations, length of service, including start date, and types of service utilized, telephone or instrument  
202 number or other subscriber number or identity, including any temporarily assigned network address, and  
203 means and source of payment for such service.

204 E. Nothing in this section shall require the disclosure of information in violation of any federal law.

205 **§ 19.2-268.3. Admissibility of statements by children in certain cases.**

206 A. As used in this section, "offense against children" means a violation or an attempt to violate  
207 § 18.2-31, 18.2-32, or 18.2-35, subsection A of § 18.2-47, § 18.2-48, 18.2-51, 18.2-51.2, 18.2-51.6,  
208 18.2-52, 18.2-54.1, 18.2-54.2, 18.2-61, 18.2-67.1, 18.2-67.2, or 18.2-67.3, § 18.2-346.01 if punishable as  
209 a felony, § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, subsection B of § 18.2-361, § 18.2-361.2,  
210 subsection B of § 18.2-366, § 18.2-370, 18.2-370.1, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, or  
211 18.2-374.4, § 18.2-386.1 if punishable as a felony, or § 40.1-103.

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

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

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

226 2. The child:

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

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

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

237 **§ 19.2-299. Investigations and reports by probation officers in certain cases.**

238 A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of  
239 § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4,  
240 attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of  
241 § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the  
242 attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a  
243 felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement

between the defendant and the Commonwealth and shall, unless waived by the defendant and the attorney for the Commonwealth, when the defendant pleads guilty or nolo contendere without a plea agreement or is found guilty by the court after a plea of not guilty or nolo contendere; or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, clause (2) or (3) of § 18.2-49, § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-361.2, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1, or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, any information regarding the accused's participation or membership in a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, including any diagnoses of an intellectual or developmental disability as defined in § 37.2-100, and any applicable sentencing guideline worksheets. This expedited report shall be subject to all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been provided with a copy of the presentence report by his counsel or advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Subject to the limitations set forth in § 37.2-901, any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person (a) is charged with a felony subsequent to the time of the preparation of the report or (b) has been convicted of the crime or crimes for which the report was prepared and is pursuing a post-conviction remedy. Such report shall be made available for review without a court order to incarcerated persons who are eligible for release by the Virginia Parole Board, or such person's counsel, pursuant to regulations promulgated by the Virginia Parole Board for that purpose. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection, information regarding the accused's participation or membership in a criminal street gang may include the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and types of crimes that are likely to be committed by that criminal street gang.

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

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

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

**§ 19.2-392.02. National criminal background checks by businesses and organizations regarding**

**employees or volunteers providing care to children or the elderly or disabled.**

A. For purposes of this section:

"Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of, subsection A or B of § 18.2-47; any violation of, § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of, subsection B of § 18.2-361; any violation of, § 18.2-361.2, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of § 4.1-1101, 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

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

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

"Department" means the Department of State Police.

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

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

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

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

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

national criminal background check on a provider until such provider has:

1. Been fingerprinted; and

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

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

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

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

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

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

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**